

## Minutes

OF THE MEETING OF THE COUNCIL OF THE LONDON BOROUGH OF BARNET held at Barnet House, N20 0EJ, on Tuesday, 4 November 2008.

### PRESENT:

\*The Worshipful the Mayor (Councillor John Marshall)

\*The Deputy Mayor (Councillor Mukesh Depala)

### Councillors:

*Maureen Braun	*Andrew Harper	*Sachin Rajput BA (Hons)
*Fiona Bulmer	*Christopher Harris BA BSc	PgD Law
*Terry Burton	MPhil	*Robert Rams
Anita Campbell	*Helena Hart	*Barry Rawlings
*Wayne Casey BA (Hons)	*John Hart BA MA	*Hugh Rayner
MIIA	*Lynne Hillan	*Colin Rogers
*Danish Chopra	*Ross Houston	Lisa Rutter
*Dean Cohen BSc (Hons)	*Anne Hutton	*Brian Salinger
*Jack Cohen	*Julie Johnson	Kate Salinger BEd (Hons)
*Melvin Cohen LLB	*Duncan Macdonald	*Gill Sargeant
*Brian Coleman, AM, FRSA	*Caroline Margo	*Joan Scannell
*Geof Cooke	Linda McFadyen	*Alan Schneiderman
*Richard Cornelius	*Kath McGuirk	Agnes Slocombe SRN RM
*Jeremy Davies BA (Hons),	*Andrew McNeil	*Ansuya Sodha MBA (Middx)
CPFA	*Alison Moore	Cert Ed, DipM (CIM), AMBA
*Tom Davey	*Jazmin Naghar	*Andreas Tambourides
*Claire Farrier	*Matthew Offord	*Joanna Tambourides
*Anthony Finn BSc (Econ)	*Charlie O-Macauley	*Daniel Thomas BA (Hons)
FCA	*Monroe Palmer OBE, BA,	*Jim Tierney
*Mike Freer	FCA	*Daniel Webb
*Brian Gordon, LL.B	*Susette Palmer MA	*Richard Weider
Eva Greenspan BA LL.B	*Bridget Perry	*Marina Yannoudakis BSc
(Hons)	*Wendy Prentice	(Hons) MA
		*Zakia Zubairi

\*denotes Member present

#### 74. PRAYER (Agenda Item 1):

The Mayor's Chaplain offered prayer.

#### 75. APOLOGIES FOR ABSENCE (Agenda Item 2):

Apologies for absence were received from Councillor Anita Campbell Councillor Eva Greenspan, Councillor Linda McFadyen, Councillor Lisa Rutter, Councillor Kate Salinger and Councillor Agnes Slocombe

**76. MINUTES OF MEETING HELD ON 9 SEPTEMBER 2008 (Agenda Items 3 and 13.2.10):**

**RESOLVED – That the minutes of the meeting held on 9 September 2008 be approved subject to the following amendment:**

**That item 55, of the Minutes of the Council meeting held on 9 September 2008, be amended by the insertion of an annotation after Supplemental Question 7 and answer, that Councillor Jack Cohen withdrew a comment that he had made in accordance with a request made by Councillor Mike Freer, Leader of the Council.**

**77. OFFICIAL ANNOUNCEMENTS (Agenda Item 4):**

The Worshipful the Mayor expressed his sorrow in formally announcing the death of Councillor Anita Campbell's husband. The Worshipful the Mayor, on behalf of the Council, expressed sympathy to Councillor Anita Campbell and her family at this sad time. The Council paid a standing tribute for the late husband of Councillor Anita Campbell.

The Worshipful the Mayor, on a lighter note, announced the retirement of Janet Rawlings, Democratic Services Manager and thanked her for her thirty –seven years of service and dedication. The Council joined the Worshipful the Mayor in wishing Janet Rawlings a long and happy retirement.

**78. DECLARATIONS OF PERSONAL AND PREJUDICIAL INTERESTS (Agenda Item 5):**

The following personal and prejudicial interest was declared relating to Agenda Item 13.1, the report of the Deputy Chief Executive, with the Member concerned leaving the chamber and not taking part in the discussion and vote in respect of the item indicated:

Councillor Danish Chopra as he had a personal and prejudicial interest in the report at Agenda Item 13.1 "Audit of the Council's accounts for the year ended 31 March 2002: Final report of the External Auditor into the sale of land at Underhill", in that he was named in the report.

The following personal and non - prejudicial interests were declared relating to the items indicated:, with the Members concerned participating in the discussion and vote:

- Agenda Item 8.2 Motion in the name of Councillor Barry Rawlings Councillor - Monroe Palmer as he is a Director of Barnet Homes.

**79. BUSINESS REMAINING FROM LAST MEETING (Agenda Item 6):**

None.

**80. QUESTION TIME FOR MEMBERS (Agenda Item 7):**

Questions were put to the Leader and the relevant Members of the Cabinet. Those questions, together with the original answers provided and the text of any supplementary questions and answers are set out in an Appendix to these minutes.

**81. VARIATION OF ORDER OF BUSINESS**

Councillor Joan Scannell, duly seconded, moved under Council Procedure Rule, Section 1, paragraph 10.2.2, that the order of business relating to Agenda Item 8 be varied so that Motions 8.1, 8.2 and 8.3 be heard first.

Upon being put to the vote, the motion was declared carried.

**RESOLVED – That the order of business be varied to allow Motions 8.1, 8.2 and 8.3 to be debated and voted upon in advance of votes being taken on the other Motions on the Agenda.**

**82. MOTION IN THE NAME OF COUNCILLOR MAUREEN BRAUN (Agenda Items 8.1)**

Motion 8.1 in the name of Councillor Maureen Braun was moved. An amendment in the name of Councillor Alan Schneiderman was moved from the floor. Debate ensued. Upon being put to the vote the amendment Councillor Schneiderman’s name was declared lost.

**RESOLVED – Council is concerned by the extension in 2003 of Regulations Investigation Powers Act 2003 (RIPA), which gives 792 organisations including access to information on communications data, as opposed to 8 previously.**

**While Council believes that Public Bodies should have the ability to investigate those suspected of fraud or malpractice, Council is most concerned that surveillance is being used in some other areas to investigate and pursue trivial matters, such as infringements of by-laws.**

**In contrast, Council applauds LBB for its approach in using these and other powers sparingly, and restricting its use of surveillance to tackle crime. Additionally, Council therefore welcomes the letter by former LGA Chairman, Sir Simon Milton, condemning the practice of invoking RIPA for minor matters and advising Councils not to use such powers in these cases.**

**Accordingly, Council resolves to support LBB’s approach of using the powers of surveillance sparingly, focusing upon the need to tackle crime, and of not using those powers to investigate minor infringements.**

**83. MOTION IN THE NAME OF COUNCILLOR BARRY RAWLINGS AS AMENDED BY COUNCILLOR LYNNE HILLAN (Agenda Item 8.2 and 13.2.8 (i))**

Motion 8.2 was moved in the name of Councillor Barry Rawlings. An amendment in the name of Councillor Anita Campbell was moved by Councillor Jim Tierney and Councillor Hillan moved an amendment from the floor. Debate ensued. Upon being put the vote the amendment in the name Councillor Anita Campbell was declared lost. Ten Members demanded a Division on the voting on the amendment in the name of Councillor Anita Campbell. Upon being taken the results of the Division were declared as follows.

<b>For</b>	<b>Against</b>	<b>Not Voting</b>	<b>Absent</b>
<b>Councillors</b>	<b>Councillors</b>	<b>Councillors</b>	<b>Councillors</b>
Casey	Bulmer	Monroe Palmer	Campbell
Chopra	Braun		Davey
Jack Cohen	Burton		Greenspan
Cooke	Dean Cohen		McFadyen

Davies	Melvin Cohen		Moore
Farrier	Coleman		Rutter
Houston	Cornelius		Kate Salinger
Hutton	Depala		Slocombe
Johnson	Finn		
Macdonald	Freer		
McGuirk	Gordon		
McNeil	Harper		
O-Macauley	Harris		
Susette Palmer	Helena Hart		
Rawlings	John Hart		
Rogers	Hillan		
Sargeant	Margo		
Schneiderman	Marshall		
Sodha	Naghar		
Tierney	Offord		
Zubairi	Perry		
	Prentice		
	Rajput		
	Rams		
	Rayner		
	Brian Salinger		
	Scannell		
	Andreas Tambourides		
	Joanna Tambourides		
	Thomas		
	Webb		
	Weider		
	Yannakoudakis		

For	21
Against	33
Absent	8
Not Voting	1
TOTAL	63

The amendment in the name of Councillor Anita Campbell was therefore declared lost.

Upon being put the vote the amendment in the name Councillor Lynne Hillan was declared carried. Upon being put to the vote the substantive motion was declared carried. Ten Members demanded a Division on the voting on the substantive motion. . Upon being taken the results of the Division were declared as follows.

<b>For</b>	<b>Against</b>	<b>Not Voting</b>	<b>Absent</b>
<b>Councillors</b>	<b>Councillors</b>	<b>Councillors</b>	<b>Councillors</b>
Braun	Chopra	Casey	Campbell
Bulmer	Cooke	Jack Cohen	Davey

Burton	Farrier	Davies	Greenspan
Dean Cohen	Houston	Macdonald	McFadyen
Melvin Cohen	Hutton	Susette Palmer	Moore
Coleman	Johnson	Monroe Palmer	Rutter
Cornelius	McGuirk		Kate Salinger
Depala	McNeil		Slocombe
Finn	O-Macauley		
Freer	Rawlings		
Gordon	Rogers		
Harper	Sargeant		
Harris	Schneiderman		
Helena Hart	Sodha		
John Hart	Tierney		
Hillan	Zubairi		
Margo			
Marshall			
Naghar			
Offord			
Perry			
Prentice			
Rajput			
Rams			
Rayner			
Brian Salinger			
Scannell			
Andreas Tambourides			
Joanna Tambourides			
Thomas			
Webb			
Weider			
Yannakoudakis			

For	33
Against	16
Absent	8
Not Voting	6
TOTAL	63

The substantive motion was, therefore, declared carried.

**RESOLVED - Council is pleased that the Conservative administration is committed to regenerating the Dollis Valley Estate. Further, Council is aware that Barnet Homes recently conducted an assessment of the housing stock on the estate with no major problems detected.**

**Council calls on Cabinet to continue its plans to regenerate Dollis Valley, and ensure that homes on the estate are maintained in good condition in the meantime.**

Further, Council urges ward Councillors to report housing problems in the first instance to Barnet Homes' officers so they can be dealt with quickly and effectively.

**84. MOTION IN THE NAME OF COUNCILLOR MATTHEW OFFORD AS AMENDED BY COUNCILLOR HUGH RAYNER (Agenda Item 8.3)**

Motion 8.3 was moved in the name of Councillor Matthew Offord. Amendments in the names of Councillor Claire Farrier and Councillor Hugh Rayner were moved from the floor. Debate ensued.

Upon being put the vote the amendment in Councillor Claire Farrier was name was declared lost.

Upon being put the vote the amendment in Councillor Hugh Rayner was name was declared carried. The substantive motion was declared carried.

**RESOLVED - Council is proud of the Conservative Administration's Leading Libraries policy that is seeing libraries refurbished across the Borough.**

**Council is particularly pleased with the upgrading at Burnt Oak, where £1 million has been spent on a new library and customer service centre for the West of the Borough.**

**However, Council is dismayed that opposition Members on LBB did not support the refurbishment of Burnt Oak Library in Full Council last year.**

**Council believes that such a facility, where residents can access a range of Council services under one roof, is vitally important for Burnt Oak, where levels of deprivation are significantly higher than the rest of the Borough, and mobility rates lower.**

**Additionally, Council believes that the coming economic downturn may increase demand for Library books and materials, and access to Council and other services.**

**Accordingly, Council calls on Cabinet to ensure that Barnet at Burnt Oak, is a success, and that all the Borough's libraries continue to be well-supported**

**85. MOTION IN THE NAME OF COUNCILLOR MIKE FREER AS AMENDED BY COUNCILLOR BRIAN COLEMAN (Agenda Item 8.4 and 13.2.8 (ii))**

Motion 8.4 in the name of Councillor Mike Freer and an amendment in the name Councillor Brian Coleman, and Jim Tierney from the floor, were moved and put to the vote without debate. The amendment in the name of Councillor Jim Tierney was declared lost. Upon being put to the vote the amendment in the name of Councillor Brian Coleman was declared carried. The substantive motion was declared carried.

**RESOLVED - Council notes the 75<sup>th</sup> anniversary this year of the inception of Finchley Municipal Borough, with the status bestowed on the former Urban District Council in October 1933.**

**Council further notes the Centenaries of both Finchley Memorial Hospital and St. Michael's Catholic Grammar School this year.**

**Council is proud of the Finchley area's contribution to the present London Borough of Barnet, from its election of the Rt. Hon. Margaret Thatcher MP, the longest-serving British Prime Minister of the 20<sup>th</sup> Century, to its twinning**

with Montclair in 1945, Siegen Wittgenstein in 1951 and Le Raincy in 1962, which continue through the London Borough of Barnet to this day.

Council resolves to congratulate the people of Finchley on the 75<sup>th</sup> Anniversary of the inception of Borough status on their area.

Council further congratulates Finchley memorial Hospital and St. Michael's Catholic Grammar School on their Centenaries, and wishes both these Finchley institutions at least another 100 years of success."

**86. ADJOURNMENT OF MEETING.**

In accordance with the Agenda, the Mayor adjourned the meeting..  
The meeting reconvened at 9.00pm.

**90. ADMINISTRATION POLICY ITEM: SUSTAINABLE COMMUNITIES ACT (Agenda Item 9.1)**

Councillor John Hart proposed the item and moved that it be adopted.  
Debate ensued on the Policy Item. Upon being put to the vote the item was declared carried.

**RESOLVED - Council believes more needs to be done nationally to increase local autonomy in promoting sustainability and recognises that the Sustainable Communities Act 2007 has the potential to facilitate this.**

**Relevant Previous Decisions:**

**Barnet Council agreed in April 2007 to the principle of the then Sustainable Communities Bill, sponsored by Nick Hurd MP, and called on the Chief Executive to advise the Secretary of State for Communities and Local Government of our support.**

**The Sustainable Communities Act is based upon this Bill.**

**Detail:**

**Of particular note, Council welcomes sections in the Sustainable Communities Act which devolve more power from Whitehall to local authorities and communities by:**

- **giving local authorities more power over money spent by national agencies on local matters in their areas; and**
- **giving local authorities and their communities the power to influence government policy to assist them in promoting sustainable communities and thereby help local authorities to protect the wellbeing of their communities and citizens;**

**Recommendation:**

**Council requests Cabinet to consider a report detailing the advantages and disadvantages of opting into the process of the Sustainable Communities Act, and, if appropriate determine the way forward.**

**91. OPPOSITION POLICY ITEM AS AMENDED BY COUNCILLOR ROBERT RAMS: FUTURE SHAPE OF THE COUNCIL (Agenda Item 9.2 and 13.2.8 (iii))**

Councillor Alison Moore proposed the item and moved that it be adopted. An amendment in the name of Councillor Monroe Palmer was moved and further

amendments in the names of Councillor Barry Rawlings and Councillor Robert Rams were moved from the floor. Debate ensued.

Upon being put to the vote the amendment in the name of Councillor Monroe Palmer was declared lost.

Upon being put to the vote the amendment in the name of Councillor Barry Rawlings was declared lost.

Upon being put to the vote the amendment in the name of Councillor Robert Rams was declared carried.

Upon being put to the vote the substantive motion was declared carried.

**RESOLVED - Council believes that it is vital LBB strives to deliver excellent services to the people of Barnet as effectively and efficiently as possible, particularly in light of the economic downturn, and sustained poor Grant Settlements from the Labour Government that seem (in light of the Comprehensive Spending Review), to continue.**

**Therefore, Council is proud of the Future Shape of the Council Project, which is investigating how Barnet's way of working can be reformed to adapt to changing times and changing needs of our customers.**

**Council notes that there are meetings with the Unions every week, and believes that dialogue with members of staff on this matter has been exemplary, with an open forum for discussion.**

**Accordingly Council asks Cabinet to ensure progress on the future Shape of the Council is delivered with the utmost transparency, continuing to seek input from staff and interested parties, and co-operating with any pre-decision scrutiny working group that is set-up as part of that service review process.**

**92. REPORT OF CABINET (Agenda Item 10)**

None

**93. REPORTS FROM OVERVIEW AND SCRUTINY COMMITTEES (Agenda Item 11)**

None

**94. REPORTS OF OTHER COMMITTEES (Agenda Item 12)**

None

**95. Audit of the Council's Accounts for the year ended 31 March 2002: Final Report of the External Auditors into the sale of land at Underhill (Report of the Deputy Chief Executive – Agenda Item 13.1)**

Debate took place. On being put to the vote the recommendations contained in the Deputy Chief Executive's report were approved.

**RESOLVED - That**

**1. Council note and accept the recommendations contained within the PWC report. However, in taking on board in full the recommendations of PWC note that since the commencement of the PWC external investigation, many actions, as outlined in the Deputy Chief Executive's report, have already been taken which would mitigate against a repetition of the issues relating to Underhill today.**

**2. That the Special Committee (Constitution Review):**



- (i) when considering the Director of Corporate Governance's report on the review of the delegated powers processes, should also note that the Council expect following that review, the Director of Corporate Governance to arrange a programme of refresher training on the delegated powers processes for Members and Officers:
  - (ii) consider the various options and implications arising from PWC's recommendation on the use of the Council's seal and make appropriate recommendations as necessary, for change to the Constitution, to the Council in April 2009.
3. That the Deputy Chief Executive make arrangements for the review of the "Records Retention and Disposals Policy" and "Guide for Members Leaflet" in light of PWC's recommendation and to arrange for the re-issue of any amended documents to all Members and Officers and publication on Barnet's intranet.
  4. That the Deputy Chief Executive send to PWC a copy of this report and advise PWC of the outcome of Council's decisions

**96. AMENDMENTS TO THE CONSTITUTION (Report of the Democratic Services Manager – Agenda Item 13.2.1 & 13.2.7 (b))**

Council advised that item 7(a) of the report relating to an Amendment to Article 7 has been withdrawn and would be considered by the Special Committee (Constitution Review) at their next ordinary meeting.

**RESOLVED -**

1. That Paragraph 12.01 (b) of Article 12 be amended by the deletion of Communications and Consultation Officer and the inclusion of the Director of Strategy.
2. That the Democratic Services Manager be instructed to make all the appropriate amendments to the Council's Constitution; details of the revisions made by the Head of Paid Service to Part 7 having already been made in accordance with Constitutional requirements.
3. That the Democratic Services Manager be instructed to make the necessary change to Part 3 of the Constitution as a consequence of Councillor Offord's change of address.

**97. EXECUTIVE DECISIONS AND THE OPERATION OF THE CALL-IN AND URGENCY PROCESS – REVIEW (Report of the Democratic Services Manager – Agenda Item 13.2.2)**

**RESOLVED -** That the report of the Democratic Services Manager relating to Executive Decisions and the Operation of the Call-In and Urgency Process - Review be noted.

**98. REPORTS EXEMPTED FROM THE CALL-IN PROCESS BECAUSE THEY ARE URGENT (Report of the Democratic Services Manager – Agenda Item 13.2.3)**

In the cases listed below, the Chairman of the Cabinet Overview and Scrutiny Committee agreed that the decisions proposed were reasonable in all the circumstances, were urgent and therefore had consented to the proposed decisions being exempted from call-in:

- (i) The Leader of the Council approved on 26 September 2008 acceptance of the tender contract sum from Norwest Holst Ltd for the Construction of East Barnet

Secondary School. The report was exempted from call-in as it was necessary to issue notice to begin construction by 26 September 2008 in order to minimise constructions cost. The next scheduled meeting of the Cabinet Overview and Scrutiny Committee would not be until 3 November 2008.

- (ii) The Leader of the Council approved on 17 October 2008 acceptance of the contract sum from Kier London Ltd for the construction and remodelling works at Edgware Infants and Junior School. The report was exempted from call-in as it was necessary to issue notice to begin construction by 17 October 2008 in order to avoid delays and increased costs. The next scheduled meeting of the Cabinet Overview and Scrutiny Committee would not be until 3 November 2008.

**99. APPOINTMENT OF CO-OPTED MEMBERS TO THE FIRST CLASS EDUCATION AND CHILDREN OVERVIEW & SCRUTINY COMMITTEE (Report of the Democratic Services Manager – Agenda Item 13.2.4 AND 13.2.12)**

The ballot was held on 31 October and the results are as follows:

Christine Haugh – 39  
Marianne Haylett – 33  
Jacob Heimann - 25

The name of the successful candidate is Christine Haugh with 39 votes.

**RESOLVED- That Christine Haugh be appointed as a co-opted member to the First Class Education Overview and Scrutiny Committee, and any successor Overview and Scrutiny Committee, as a parent governor representative for the period ending November 2010.**

**100. CHANGES TO COMMITTEE MEMBERSHIP (Report of the Democratic Services Manager – Agenda Item 13.2.5)**

**RESOLVED – That the following change in Committee Membership be approved:**

- **Councillor Mukesh Depala to replace Councillor Marina Yannakoudakis as a member of the Licensing Committee.**

**101. OVERVIEW AND SCRUTINY COMMITTEE WORK PROGRAMME 2007/08 and 2008/2009 (Report of the Democratic Services Manager – Agenda Item 13.2.6)**

**RESOLVED – That the**

- (i) **highlights of the 2007/08 Overview and Scrutiny work programmes be noted;**
- (ii) **proposed forward plan work programmes for 2008/2009, as attached at Appendix 1, as identified by the Council’s Overview and Scrutiny Committees, with the exception of the Cabinet Overview and Scrutiny Committee, be approved.**

**102. LEADER’S SCHEME OF DELEGATION: ASSISTANT CABINET MEMBERS (Report of the Democratic Services Manager – Agenda Item 13.2.11 & 13.2.13)**

In accordance with the Constitution, the Leader of the Council had advised the Democratic Services Manager that he had:

- removed Councillor Marina Yannakoudakis as an Assistant Cabinet Member for Children
- Appointed Councillor Eva Greenspan as Assistant Cabinet Member for Housing and Regeneration
- Appointed Councillor Maureen Braun Assistant Cabinet Member for Policy and Performance

**103. REPORTS FROM THE MONITORING OFFICER (Agenda Item 13.3.)**

None.

**104. COMMENTS RELATING TO THE WORK OF THE CABINET (Agenda Item 14 and 13.2.9)**

**Comment: Councillor Wayne Casey**

I hope that the Cabinet Member who's going to respond to this has had a copy of the letter from Mrs Sue Mills, the Headteacher of Woodcroft Primary School, dated 20 October 2008, in which she complains about Council Officers setting fire to what she calls a fly tip, setting fire to this fly tip and creating a bonfire that burnt for two days. Mr Mayor, could I ask the Cabinet Member to first of all confirm or deny that it was Council Officers responsible for this bonfire and if, indeed, it was the Council's responsibility could he give me an assurance that this won't happen again because it did cause extreme distress to both the staff and the pupils of Woodcroft Primary School and, yes, the last point is, could he comment on what kind of example this sets to the children of Woodcroft Primary School, who've been told all about global warming and this doesn't set a particularly good example.

**Response: Councillor Andrew Harper**

I'm certainly aware of the incident and the senior Officers in Environment and Transport were. The facts are that Barnet Homes had employed the Council's green spaces team to undertake some ad hoc clearance works to the gardens at the rear of part of Watling Avenue. The works involved cutting down and removal of vegetation and some removal of fly tipped items, including old furniture, and because there was restricted access to the site, an unauthorised decision was taken to burn the arisings and the waste on the site. This is certainly not permitted in Council practice. It is indeed a serious breach of working practice and of the Clean Air Act and I and the management of the service take a very dim view of it. All of those involved in the incident have been suspended whilst the matter is investigated further.

**Comment: Councillor Joanna Tambourides**

As Members will be aware, Barnet Council has been running a pilot scheme for the past month where kitchen caddies have been distributed free of charge to households across 8 areas in the Borough. Could the Cabinet Member please inform us whether the pilot has been successful in encouraging composting of green waste in these locations?

**Response: Councillor Andrew Harper**

I'm very glad to have the chance to draw attention to this important project involving 8,500 households across, as Councillor Tambourides has said, 8 different wards, quite different in their character. This is a key part of our waste reduction effort and we're doing this because an analysis conducted in 2007 of the waste in black wheelie bins

showed that 30% of that waste was in fact kitchen waste. So we needed to encourage residents to separate out as much of that as possible. Now, we already offer, as Members will know, a weekly garden and kitchen waste kerbside collection service right across the Borough and that's 55,000 households now have a green bin and last year some 17,000 tonnes of organic waste went to composting. The pilot scheme, admittedly, although barely a month old, is already showing results. Many residents in the pilot area are using their new caddies, putting more kitchen waste out for collection. We're monitoring the scheme very closely and indeed we'll be giving it a fresh publicity boost in the run up to Christmas and New Year. So I can say to Councillor Tambourides that I'm very confident that it will be a success and that we'll be able to extend it to other parts of the Borough.

**Comment: Councillor Marina Yannakoudakis**

I understand that, according to TfL, that Barnet has suffered the highest number of road deaths and the second highest number of casualties in London during 2007. Could the Cabinet Member explain why this is and also confirm what action we're taking to improve our road safety?

**Response: Councillor Andrew Harper**

This is the third and final time of asking. Yes, indeed the road accident statistics are greater than most other London Boroughs, but we do have the largest road network and the second largest population of any London Borough and indeed many thousands of people travelling across our Borough every day. A second factor is the high proportion of the road network that isn't actually controlled by Barnet Council and I'm thinking of the M1 and the trunk roads of the A1, the A5 and the North Circular, and in fact accident rates on the TfL managed roads are proportionately greater than on the ones that we, Barnet Council, control. Now that said, I would say to Councillor Yannakoudakis that statistics for the first 6 months of this year show a significant reduction over the previous 2 years and we'll be doing our utmost to maintain this trend. The Council will play its part, but I call on the Police too, to help through their enforcement activities and above all I call on all of our road users, motorists, cyclists, motor cyclists and pedestrians to keep safety uppermost in their minds when on Barnet's roads

**Council Questions to Cabinet Members  
4 November 2008  
Questions and Responses**

**Question 1****Councillor Daniel Thomas**

Please could the Leader of the Council outline his activities in building relationships with the new Mayor of London?

**Answer by Councillor Mike Freer, Leader of the Council**

The Administration has continued to develop strong links with the Mayor's Deputy Mayors, Milton, Clements, Barnes and Malthouse as well as ongoing dialogue with the Deputy Mayors on housing policy, regeneration, policing and general issues concerning the Suburban Agenda. Most recently the Mayor's advisor on Housing attended the Borough's Housing Conference and has committed to maintaining dialogue.

**Supplementary Question 1****Councillor Dan Thomas**

The Leader used to refer to Mayor Livingstone as a Zone 1 Mayor, so I'd like to ask him if he thinks the same of Mayor Johnson?

**Answer by Councillor Mike Freer, Leader of the Council**

There are two differences of course. Mayor Johnson is certainly not a Zone 1 Mayor, he is a Mayor for all of London, and of course, he has excellent taste in Chief Executives. I will be looking forward to seeing Barnet's influence extending to City Hall.

**Question 2****Councillor Duncan Macdonald**

Can the relevant Cabinet Member please advise if works to existing roads and pavements (including street lighting) in the Borough follow the guidance set out in the DETR's Manual for Streets?

**Answer by Councillor Andrew Harper**

The Manual for Streets (MfS) publication produced jointly by the Departments for Transport and Communities & Local Government replaces Design Bulletin 32 and its companion Design Places, Streets and Movement.

The new guidance in MfS is being used on new developments with regard to agreeing the residential layout on new build and also agreeing adoptable highway layout. MfS is not used on planned maintenance schemes unless the street layout is subject to re-design.

MfS provides guidance on the design of layouts, construction, adoption and maintenance of new streets. It covers the design considerations for residential streets and lightly trafficked local roads although some of its principles may be applied to other road types where appropriate. It is not, however, meant to be used on heavily trafficked roads as these are covered by the Highways Agency's Design Manual for Roads and Bridges.

**Question 3****Councillor Zakia Zubairi**

When will the rat-infestation at the Log Cabins in Grahame Park be resolved, and the facility re-opened to local residents?

**Answer by Councillor Fiona Bulmer**

The activities provided at Log Cabin are being provided from St Augustine Church Hall. The service will continue at these premises until the planned move to the new building "Green Top", scheduled for January 2009.

**Supplementary Question 3****Councillor Zakia Zubairi**

Has the problem for the log cabins been resolved and, if not, why not?

**Answer by Councillor Fiona Bulmer**

The problem remains, that's why the activities have been moved to the church hall. It seemed more sensible to do that, and then move the activities, fully and properly, when the new log cabin opens in January.

**Question 4****Councillor Brian Gordon**

The recent report of the Campaign to End Child Poverty (CECP) stated that although Barnet has a relatively low proportion of children from poor families, there are some areas within the borough which contain some of the highest concentrations of poverty in London. Whereas these problems are basically caused by national economic factors, could you please indicate some of the ways in which our Council is working to alleviate these problems?

**Answer by Councillor Fiona Bulmer**

The Council provides support to vulnerable families through the 'Building Resilience Supporting Independence' strategy which provides range of help from both Council services and the voluntary sector. Barnet's Children's centres, which are focused in more deprived areas of the Borough, provide childcare, parenting support and help parents find employment and training.

Raising educational achievement is also a vital factor in tackling poverty and Barnet schools have an excellent record in helping children from all backgrounds do well at school and gain the qualifications that will help them succeed in their adult lives.

**Supplementary Question 4****Councillor Brian Gordon**

Councillor Bulmer thank you very much indeed for your pointers, as to the way in which our Council is doing its best to alleviate poverty wherever it is in the Borough. Could you please confirm, that in view of the severe economic problems this country is going through, which we've been discussing earlier on, and in view of all the difficulties caused by the credit crunch, that we will continue to operate the most vigorous policy of cutting unnecessary public expenditure and reducing bureaucracy in this Council right across the board, wherever we can?

**Answer by Councillor Fiona Bulmer**

Some of that is outside my remit, but certainly within the Children's Services we will continue to ensure that money is focussed on the frontline services to support children and their families, and bureaucracy is reduced to an absolute minimum.

**Question 5****Councillor Duncan Macdonald**

Can the relevant Cabinet Member assure me that all street lights replaced by DW lighting under the PFI project are as the letter to residents puts it "life expired" and are at "risk of structural failure"?

**Answer by Councillor Andrew Harper**

The programme of street lighting column replacement extends for a five-year period. The priority order of replacement is based on a number of factors, however the age and condition of the lighting columns is the most important when evaluating the priorities. The replacement programme requires replacement of 16,786 lighting columns in total, Borough-wide, of which approximately 50% are life expired. The structural integrity of a lighting column can not be guaranteed beyond the manufacturers stated life expectancy and therefore the risk of structural failure places an increased liability on the contractor / Council.

The industry guidance documents recommend that a risk management approach is used over time to reduce this liability, with consideration given to funding a time managed replacement programme, to avoid any columns becoming life expired as the preferred option or where funding is difficult instigating a programme of structural testing and replacing those columns which fail the tests. As of now, half way through the five-year programme, the vast majority of the life expired columns have been replaced. The contractor has therefore amended his consultation letter and no longer refers to columns being life expired, hence potential danger of structural failure is largely eliminated.

**Supplementary Question 5**

**Councillor Duncan Macdonald**

Can I ask Councillor Harper therefore if we are replacing lights now that are not life expired?

**Answer by Councillor Andrew Harper**

Over the full programme of the street light replacements of the Borough, and bearing in mind that we intend replacing all of the street lights eventually, yes we will be progressing in that direction.

**Question 6**

**Councillor Julie Johnson**

Leaseholders on the West Hendon Estate are receiving bills for upwards of £1000 to pay towards new community digital TV aerials. Some of these residents have free boxes – why are they still expected to pay towards equipment they do not use?

**Answer by Councillor Lynne Hillan**

The Government has placed a statutory duty on Council housing landlords to provide access to digital television as part of the ‘Switchover’ from analogue to digital.

Under the terms of the lease, Council leaseholders are required to contribute towards the cost of installing or renewing the communal TV and / or radio aerial. The system will receive digital and satellite services and will mean that there will be no further need for individual dishes or set-top boxes. As with all communal TV aerials, it will be available for all residents to use.

The average cost of the system is around £350 per property. If individual leaseholders were not charged, there would be a significant loss to the HRA, which would be borne by tenants.

**Question 7**

**Councillor Brian Gordon**

Are we satisfied that Parking Enforcement Officers are allowing sufficient time for motorists to interpret the parking signs and obtain tickets from machines before proceeding with issuing penalty notices?

**Answer by Councillor Andrew Harper**

This is very much dependent on the nature of the contravention. For example, if a vehicle is parked on a waiting and loading 24/7 restriction, this would be an instant contravention, in that no stopping or parking is permitted at any time. However, in saying this it takes an Enforcement Officer between 3-5 minutes to issue the penalty and complete the required evidence such as their pocket book and photographic evidence. With pay and display or residents bays, Enforcement Officers do give a five-minute observation wait time before starting to issue a PCN as drivers may be obtaining a visitors voucher or pay and display ticket. This is in addition to and before the time taken to issue the penalty and prepare the additional evidence. Therefore, it is felt that sufficient time is being given for motorists to check signage and obtain the necessary voucher / ticket prior to a penalty being issued.

**Supplementary Question 7**

**Councillor Brian Gordon**

Councillor Harper, I do appreciate that we do have such a policy whereby Parking Enforcement Officers are supposed to give a 5 minute observation period, but I have to say that from time-to-time I do get complaints about this particular principle being breached and it's totally not political.

I would like to ask you whether you could continue to do everything possible to make sure that Enforcement Officers don't take advantage of the situation and pounce on vehicles without even giving people sometimes the time to put money in the meter. I would be very happy, if you like, to keep you informed of those complaints that I get, and send you copies of those letters of complaint that I often have to write.

**Answer by Councillor Andrew Harper**

I'm very glad that Councillor Gordon has put a non-political point to me. I don't doubt also that he and other Members of this Authority will not hesitate to let me know when they encounter similar difficulties. Of course, I will be glad to hear from them and do my best to deal with them.

**Question 8**

**Councillor Duncan Macdonald**

Please could the relevant Cabinet Member advise the number of meeting rooms / offices within the Boroughs offices that are equipped with AV / Video conferencing facilities and the number of meetings that took place in those rooms where that equipment was utilised within the month of September this year?

**Answer by Councillor Mike Freer, Leader of the Council**

324.

**Supplementary Question 8**

**Councillor Duncan Macdonald**

Councillor Freer, this has to be one of the most bizarre answers I think that's ever been received to a question. 324 what? Meeting rooms? People? Could I ask him to have another go at answering the question?

**Answer by Councillor Mike Freer, Leader of the Council**

Yes, I did miss that Councillor Macdonald wanted to know the number of meeting rooms, 324 is the number of meetings, 23 meeting rooms.

**Question 9**

**Councillor Kath McGuirk**

Will the Cabinet Member tell me the criteria used for the adoption of roads within the Borough and how many roads have been adopted each year since 2002?

**Answer by Councillor Andrew Harper**

The Highways Act 1980 lays down the process for a highway authority to adopt a road and empowers the Council to accept the maintenance liability for un-adopted roads. These can be either newly constructed development roads, or established roads, which have not been adopted previously. It is usually the responsibility of the owner(s) to bring the road up to standard prior to its adoption.

The reason why a road(s) may not have been adopted will be that it doesn't comply with the Authority's specification for the construction of roads for adoption, or it doesn't meet the design guide criteria for the layout of adopted roads.

A new or existing un-adopted road will be adopted as a highway, maintainable at public expense, if it meets with the following requirements when it is built:

- The road must form a direct link with the existing public highway network.
- It must be of benefit to wider community.
- The carriageway and footways must be of widths and gradients that offer a safe passage for pedestrians and vehicles.



- The carriageway and footways must have an approved means of surface water drainage. The surface water drains usually gets adopted by the Highways Authority if it purely collects run-off from the proposed adoptable highway. If there are private drains connected to this drainage system, then this needs to be adopted by Thames Water Utilities Ltd before the Highways Authority can consider the road(s) for adoption.
- The street lighting must meet the current local requirements and national standards.
- The materials used within adoptable highway must meet the current adoptable construction standards.
- If a road is to be adopted, its design must be approved the Highways Authority and the construction must be supervised by the Highways Authority under an Agreement pursuant to Section 38 of the Highways Act 1980. The owners must also get our formal consent before any work can take place on a new or existing public highway.
- The freehold owner/s of the land must dedicate the road as a public highway when it is built, at no cost to the Council, under a Section 38 Agreement of the Highways Act 1980. This agreement says that we will adopt the roads if they are built too a pre-defined standard of detail and construction. A financial contribution towards future maintenance may also be included if non standard materials are used within proposed construction.
- The road must remain open to the public at all times when it is formally adopted.

Prior to the transfer of drainage agency agreements back to Thames Water Utilities Ltd during 1997, the adoption agreements for roads and sewers were progressed by the Council. Since the transfer, there have been long delays in finalising sewer adoption agreements with the Water Authority. This has caused delays in getting roads adopted. We have numbers large developments that were built during late 90's still awaiting for the roads to be adopted. Therefore the adoption process can take a long time and while the road remains un-adopted, it is in the ownership of the developer who is also responsible for the maintenance of the road/s within the development.

Since 2002, we have adopted the following roads and footpaths in the Borough:

- 2002 Agnesfield Close; Fallowfields Drive; Hawthornden Close; Summerfields Avenue; Pond Close; Thistly Close (bell mouth); Harwood Close (Short Section); Newstead Close (Short Section)
- 2003 Cheriton Close; Lichfield Close; Osborne Close; Verwood Drive; Northgate Drive (Extension)
- 2004 Nil
- 2005 Balmoral Avenue; Baron Close; Duchess Close; Earl Close; Highgrove Close; Kensington Close; Viscount Close;
- 2006 Halton Close; Tewkesbury Close (Turning Head); St. Vincent's Lane (bell mouth)
- 2007 Hampton Close; Footpath linking Balmoral Avenue and Regal Drive; Regal Drive (short section adjacent to Station Approach- Boundary Wall Opening); Old Rectory Gardens (short section); Manor Park Crescent (short section)
- 2008 Nil to date

#### **Question 10**

#### **Councillor Brian Gordon**

At the recent Hendon Area Forum questions were raised about the need to improve the toilet facilities at Hendon Park. It is understood that this matter is being attended to. Could we please have an update as to progress?

#### **Answer by Councillor Andrew Harper**

Yes, the matter is in hand. Work specifications for the following two options are currently being drafted, ready to put out to quotation:

- A. The provision of a fully accessible toilet via a radar key equipped with hot water and hand drying facilities that will meet the needs of the operating licence for the nearby café.  
 Decoration of the current ladies and gents single cubicle toilets.

- B. The provision of more facilities for ladies and gents with the extension and refurbishment of the current single toilets, provision of a fully accessible toilet for the public. The provision of a staff only toilet equipped with hot water and hand drying facilities.

S106 monies have been identified to fund the project and a contribution will be required from the café operator for the provision for both an exclusive facility for his staff or the provision of hot water and hand drying facilities within the fully accessible toilet. The preferred option is to increase the quantity of facilities available at the site but this will depend upon the cost of the works.

A meeting is to be held with the lessee of the café in the w/c 27 October to discuss current progress and the two separate issues:

1. The provision of toilet facilities for his staff required for the café to operate and his contributions towards this.
2. Public toilet provision for the park and café customers.

Meanwhile, since the last site meeting on 29 August the following problems have been reported and actioned:

- Blocked drains – cleared.
- No lights – repaired.
- No toilet roll holders – fitted.

The lessee of the café is responsible for the cleaning of the toilets and provision of consumables including toilet roll and soap.

#### **Supplementary Question 10**

#### **Councillor Brian Gordon**

Councillor Harper, I'm most grateful to you for your indication that the work is being carried out to the toilets in Hendon Park. It isn't something that I'd normally be so concerned with as it's some way from my ward, but you appreciate that Hendon is very vibrant and dynamic, and in Area Forum these sorts of issues do get raised. Can I suggest, we give a bit of publicity to what we're doing in Hendon Park, and in this particular regard, maybe you and I and the café owner and some other residents, can meet outside the toilets in order to get some nice pictures taken to show the wonderful things the Council is doing to keep these toilets and all the other facilities in the park in such good trim?

#### **Answer by Councillor Andrew Harper**

I'm all in favour of photo opportunities, but done in a circumspect and as focussed a manner as can possibly be. But, yes we are working very hard now to resolve the problems with the toilet facilities at Hendon Park which have been a difficulty for some time. Unfortunately, not always helped by the people in the café. But, nevertheless we are talking to them now, and I hope we'll see some improvement soon to what is already a very excellent park there in Hendon.

#### **Question 11**

#### **Councillor Jack Cohen**

At a recent Cabinet and Overview Committee meeting you confirmed that residents in NW11, NW7 and NW2 do not receive equal coverage in home care service response. Please will you provide me with more details? Please include in your reply the number of residents affected, the type of service not being provided, and an explanation of what is being done to rectify this.

#### **Answer by Councillor Lynne Hillan**

It was stated that the following postcodes can be difficult to cover with this service:  
NW11, NW7, NW2, NW4, EN4, EN5

All Homecare provisions including short term / one off packages and ongoing packages 07/08	Packages by postcode
35	EN4
88	EN5
30	N11
46	NW2
40	NW4
50	NW7

All service users are in receipt of homecare. Occasionally the care package may need to be split across 2 agencies to provide the full 7 day coverage of need and in emergency situations alternative services are secured to ensure service user safety pending the start up of the home care package.

The difficulties tend to occur at certain times of the year namely holiday periods / school holidays when more care staff are not available.

It is anticipated that the Council and homecare agencies will shortly reach a voluntary agreement where there will be a system of 'first / second call' in designated areas when it comes to matching the requests for care to the providers.

Building coverage in this way through a better managed system of purchasing should help providers in compiling more realistic rosters for the provision of services to the residents of Barnet, reducing care travel time and improving coverage in each area of the borough without inflating the overall cost of the service.

The smooth implementation of this new system will be supported by the recently centralised care sourcing function known as **brokerage**, so that all demand for homecare is channelled through one access point acting as a more effective pivot between demand and service provision.

In addition Officers are working with parking and have fed the specific issues for domiciliary care visits into the review of parking permits.

#### **Supplementary Question 11**

#### **Councillor Jack Cohen**

Councillor Hillan, you've not answered my question, for some reason you've not given me the figures for the NW11 postcode area. Your answer, if I can understand it, appears to try to downplay the problem. Although you appear to try to obscure the facts, isn't the truth that lack of resources and penny pinching is the reason for the shortfall in this service?

#### **Answer by Councillor Lynne Hillan**

The problems are logistic, all service users are in receipt of home care. There is nobody that is having to do without as a result of this. We are merely looking at the logistics of actually providing the services in certain areas that are proving to be a little bit difficult.

#### **Question 12**

#### **Councillor Alison Moore**

How much did the Council spend on investment advice from Butlers between 2006-2007?

#### **Answer by Councillor Mike Freer, Leader of the Council**

The Council paid Sector Treasury Services Ltd £15,435.00 for treasury advice during 2006-007.

**Supplementary Question 12****Councillor Alison Moore**

Councillor Freer, if you're paying significant sums of money for treasury advice, one needs to ask why you aren't asking for a wider analysis and a wider range of information about counter parties, rather than just relying on the credit ratings and credit rating agencies, as this has clearly been a problem?

**Answer by Councillor Mike Freer, Leader of the Council**

The Councillor is misinformed and she had a full answer to this at Cabinet Overview and Scrutiny last night. She well knows that these advisers give more than a simple credit reference.

**Question 13****Councillor Brian Gordon**

Who is best placed to serve on and Chair the Crime and Disorder Panels in London?

**Answer by Councillor Brian Coleman**

Elected members and in the case of Barnet, me.

**Supplementary Question 13****Councillor Brian Gordon**

Councillor Coleman, the reason I raised the question about Crime and Disorder Panels is that I did read of a proposal, I think by the Home Office, to try and bring all kinds of other lay people and various odd miscellaneous individuals onto these panels, which didn't seem to me to be a very good idea. I'm very pleased that you've confirmed that people like yourself are on it and there should be elected members, but could you comment on the proposals that I'm referring to?

**Answer by Councillor Brian Coleman**

Councillor Gordon, I think, refers to current Home Office consultation. Whilst the Council and I are happy to work with all interested parties in reducing crime and disorder across the Borough, I strongly believe that ultimately responsibility for many of these matters should rest with elected politicians.

**Question 14****Councillor Jack Cohen**

Please explain how the Council allowed a video containing an anti- Semitic content to be released on the internet.

**Answer by Councillor Mike Freer, Leader of the Council**

The Council is embarking on new ways in which we can engage and capture the views of residents to assist the shaping of future service provision. Part of this work included the recording of 17 videos with residents in the Childs Hill and Hale wards of the Borough.

Each video was recorded by an external third party and edited prior to being sent onto the Council where a further viewing took place. One video was uploaded on 28 September 2008.

One complaint was received in relation to the video from a resident.

Corporately, discussions took place as to whether the video should remain to stimulate debate or be removed however following an e-mail from the Leader of the Council at 7.30am on 3 October 2008 the offending video was removed by 9am the same day.

Any future videos uploaded to Council websites involving the views of residents will follow the OFCOM Broadcast Guidelines, will be subject to a double editing process and will be vetted by the Council's Strategic Equalities Advisor.

Mistakes occur it is how they are handled that is important and my response was swift once the issue was brought to my attention.

#### **Supplementary Question 14**

#### **Councillor Jack Cohen**

Councillor Freer, this is truly an astonishing reply to my question. Your answer about a video which contains anti-semitic remarks includes the following, "Corporately discussions took place as to whether the video should be made to stimulate debate". Well Councillor Freer, what kind of debate did you want to be stimulated, and whoever this corporate was, will you confirm that they've been told in no uncertain terms, that this kind of thing must never be allowed to happen again?

#### **Answer by Councillor Mike Freer, Leader of the Council**

The use of different technology to identify issues in the Borough is to be welcomed. We then have to separate out what was a mistake and mistakes happen. It is actually how mistakes are rectified that is important. This issue was brought to my attention first thing on 3 October and by open of business it was removed. In addition, I reported the matter to the police and they have a full copy of the clip and the transcript, and their advice is that there was no action to take. Looking at the whole clip the police were of the view that the comments were ignorant rather than anti-semitic, although I accept that is always in the eye of the beholder. I can give a guarantee that the editing regime has been tightened up to ensure that clips are double edited and not simply posted by one individual.

#### **Question 15**

#### **Councillor Barry Rawlings**

Cabinet made a decision sometime ago to award the contract for hosting the LINK to the Community Investors Development Agency. Can the Cabinet Member update me on progress with that contract and the LINK?

#### **Answer by Councillor Lynne Hillan**

Formal contract negotiations with CIDA commenced on 1 September after expiry of call-in and a ten day standstill period as required by EU Procurement law. CIDA challenged a lot of our standard contract terms and conditions, and in particular the requirement for a performance bond and the terms of the bond. As a result the signing of the contract was not straightforward and has been a protracted process with both parties seeking professional advice. However all outstanding issues have now been resolved and the final contract documentation is now ready for signature. The contract will be backdated to 1 September.

The database of all interested LINK parties has been passed to CIDA and they have begun to communicate with them, inviting them to LINKS induction sessions they are holding and circulating a bulletin for LINKS members in Barnet and the other Boroughs where they won the contract. They have also begun to make contact with some key local agencies relevant to the LINK including BVSC.

**Question 16**

**Councillor Brian Salinger**

Will the Cabinet Member please update members on the present position with regard to the future use of the Stanley Road Playing Fields? Will the Member please include in his response details of any meetings held between Councillors and Officers of the Council to discuss the way forward and any meetings that have been held between Councillors and / or Officers of the Council with other interested parties in the last three months?

**Answer by Councillor Mike Freer, Leader of the Council**

Stanley Road Playing Fields is currently leased. The Council has no current plans for the land and the East Finchley Community Development Trust will be encouraged to discuss with the leaseholder their proposals.

I have met and been briefed by Officers on 20 June, 1 August, 12 September and 24 October.

**Supplementary Question 16**

**Councillor Brian Salinger**

Will the Leader tell Members when the playing fields were last used by the lessee, and under what circumstances can the lease be terminated, and if the premium and other dues under the lease have been paid?

**Answer by Councillor Mike Freer, Leader of the Council**

As you'd expect that level of detail is not at my fingertips and I'll arrange for a briefing to be sent to the Member.

**Question 17**

**Councillor Jack Cohen**

I refer to your delegated powers report 640. This relates to the Colindale Area Action Plan – Preferred Options. You state the preparation of the Colindale AAP is being financed by Fairview New Homes. Do you mean that Fairview is paying the all the associated cost as set out in paragraph 5 of the report? If not how much of this is being paid by this Council?

**Answer by Councillor Melvin Cohen**

As stated in the delegated powers report referred to, the preparation of the Colindale Area Action Plan (AAP) is largely being undertaken by a multi-disciplinary team of planning consultants supported and overseen by staff from the Planning, Housing and Regeneration (PHR) service. The work being carried out by the consultancy team is being initially financed by Fairview New Homes Ltd, a key landowner and developer working in partnership with the Council.

Fairview own the former Colindale Hospital site and the Brent Works site within the AAP study area for which they will be preparing separate major planning applications.

Whilst Fairview are forward funding the consultancy work, the overall cost of this will be shared amongst other landowners / developers as they bring forward their sites for development and make a contribution to the strategic master planning of the area. These include Barnet College, the British Newspaper Library, Genesis (Zenith House), Middlesex University and the Metropolitan Police.

The principle of financing planning frameworks in this manner is well established and assists in securing full stakeholder engagement and sound and deliverable strategies. A similar approach has been adopted for the Mill Hill East Area Action Plan.

**Supplementary Question 17**

**Councillor Jack Cohen**

Councillor Melvin Cohen, I must congratulate you, you're better than Councillor Hillan at not answering my questions. I will ask you again, how much is being paid for by Fairview and how much by the Council? If you do not know, say so.

**Answer by Councillor Melvin Cohen**

The Council will of course be contributing significant Officer time and expertise in guiding, monitoring and vetting the process work. But, it will not be funding the consultancy work streams. We will, however, be contributing to administrative costs including posting, printing and hiring of exhibition space. I hope that's sufficient information for the Councillor.

**Question 18**

**Councillor Jim Tierney**

What is the current market value of the Dollis Valley estate?

**Answer by Councillor Mike Freer, Leader of the Council**

The estate is primarily a Council estate and so could not be sold on the open market. Accordingly there is no market value.

**Supplementary Question 18**

**Councillor Jim Tierney**

Councillor Freer, thank you for your answer. Councillor Freer, after two Cabinet reports in 2003 and 2005, both of which refer to the necessity of securing a development partner, I understand that yet another report is due in draft form, due this year or early next on Dollis Valley. If we're serious about regenerating this estate, Councillor Freer, if we're serious about securing a development partner, shouldn't we at least know at this stage the possible development value of the land?

**Answer by Councillor Mike Freer, Leader of the Council**

Well given the mess that this Government has put the economy in the development value is dropping by the minute, so if you'd like to ask me in five minutes time and again at half past 7, I might be able to give you different answers.

**Question 19**

**Councillor Brian Salinger**

Will the Cabinet Member please advise members of the progress being made by Barnet Homes to improve the Council owned housing stock (outside the 4 regeneration estates) to the 'decent homes' standard?

**Answer by Councillor Lynne Hillan**

4000 homes have been brought up to the Decent Homes Standard including:

- ✓ 1742 window replacements
- ✓ 1100 heating systems upgraded
- ✓ 1600 bathrooms upgraded
- ✓ 3000 kitchens upgraded

**Supplementary Question 19**

**Councillor Brian Salinger**

Will the Cabinet Member acknowledge this is an excellent achievement by Barnet Homes achieved with the help and co-operation of our tenants? Will the Cabinet Member confirm that having made this very significant investment in our housing stock that the Cabinet will respect the manifesto commitment to support Barnet Homes and retain ownership of the housing stock?

**Answer by Councillor Lynne Hillan**

I will certainly support your request that it's excellent, that they have managed all of the decent homes stuff and they've done very very well. As far as the rest is concerned, I think an awful lot depends on the Government's response to the HRA problems.

**Question 20**

**Councillor Jack Cohen**

Please provide me with details of tasks undertaken by the Assistant Cabinet Members since their appointment.

**Answer by Councillor Mike Freer, Leader of the Council**

They have continued in the unpaid capacity to support Cabinet Members in policy development and in the delivery of their portfolio.

**Supplementary Question 20**

**Councillor Jack Cohen**

Yes, Councillor Freer, I notice from papers that will be presented to us later tonight that you've appointed another 2 if not 3 new assistant Cabinet Members. Your vague answer to my request for details of tasks undertaken by these assistant Cabinet Members leads me to conclude either you have no idea of what they do or their post is a complete waste of time, which one is it?

**Answer by Councillor Mike Freer, Leader of the Council**

Councillor Cohen's entitled to draw his own conclusions. I am perfectly happy with the role of the assistant Cabinet Members and the tasks that they're undertaking for me. That's a matter for me and not Councillor Cohen. As these matters are not a cost to the public purse, the tasks are entirely within my remit. If Councillor Cohen doesn't like it, he's perfectly entitled to that position, but it's not a position I share.

**Question 21**

**Councillor Julie Johnson**



The building site that was formerly the residential home for the elderly on the West Hendon Estate is in a disgraceful state. It is now sometime since the building was demolished but the area has become rat infested, full of dumped rubbish and targeted by gangs of youths especially at night. The fence, which does nothing to keep people out, is covered with graffiti. How much longer do residents have to endure this eyesore?

**Answer by Councillor Lynne Hillan**

The site is owned by Catalyst Group and when they have been advised of the site being dumped with rubbish or the hoardings being damaged, they do respond, albeit somewhat slowly. Environmental Health have had no reports regarding rat infestation but they are visiting the site to investigate rats, putrescible rubbish and insecure hoardings and will report their findings to Catalyst so that they can remedy the problem.

Barnet Homes periodically removes the graffiti from the hoarding at Perryfields. They have plans to use the hoarding for street art and it is hoped to do this during the first half term in 2009. They will be working to get some match funding from one of our partners to cover the cost of an artist and the paint.

**Supplementary Question 21**

**Councillor Julie Johnson**

Thank you for your answer. Do you not agree that the Catalyst Group should be more proactive regarding this site and implement regular inspections? Could Councillor Hillan comment on what the plans are for this site and the timescale involved?

**Answer by Councillor Lynne Hillan**

Well, as you know, the site is owned by Catalyst so at the moment I can't give you any details of what they plan to do with it. But, yes, I do think that any organisation should be responsible for clearing up. I know it's in your ward, so I would be perfectly happy to support you if you want to make representations to them.

**Question 22**

**Councillor Brian Salinger**

Will the Cabinet Member please make a statement about the fire at Garth House?

**Answer by Councillor Lynne Hillan**

In the early hours of Sunday 5 October 2008 a fire broke out at our sheltered scheme at Garth House on the Granville Road Estate. Residents were successfully evacuated initially to an adjacent church hall whilst the fire was tackled by the fire brigade and emergency services.

Residents were then moved to the Rosa Freedman Centre on the nearby Whitefields estate where they could be cared for more comfortably and where their health needs etc. could also be checked. I can confirm no one was hurt in the incident.

Of the 29 residents displaced initially 5 stayed with their relatives, 5 after a care assessment were moved to Apthorp to receive a greater level of support and 19 were placed in the nearby Holiday Inn where a member of Barnet Homes' staff also stayed with them.

Barnet Homes made emergency funds available to residents on the Monday after the weekend incident to ensure they could replace small items of immediate need. Many residents will not have their own insurance and we will continue to ensure they are appropriately supported and compensated.

The fire has caused significant damage to the building and in particular the upper floor and roof. The cause of the fire is still unknown and is currently being investigated by the fire brigade. Garth House was secured the next day by Barnet Homes including a 24 hour security guard to protect the belongings of residents. A safety hoarding around the site has now also been erected.

There are ten flats in the annexe of the block which appear to be largely undamaged. A further number of flats on the ground floor have mostly suffered water damage only whilst the top floor flats have been destroyed with their contents.

Residents were moved to the Holiday Inn at Elstree as the original hotel could not cater for them beyond the first night. We have continued to have a member of Barnet Homes' staff staying in the hotel with residents to offer suitable support whilst we secure permanent alternative accommodation.

Staff are currently involved in salvaging belongings from Garth House where possible for residents. Barnet Homes have sought contributions to a fund to help residents who have lost their belongings from a variety of commercial and voluntary organisations.

Excellent progress has been made in seeking alternative housing for displaced residents by staff of the Council and Barnet Homes. The current position [as at 20/10/08] is that just 8 Garth House residents remain in the Holiday Inn Elstree. Of these five have tenancy commencement dates for 27 October and we are actively seeking alternative accommodation for the remaining three.

A Barnet Homes Officer continues to stay at the hotel to provide support and advice to the residents. It should also be noted that the staff at the Holiday Inn Elstree have been extremely helpful and co-operative in assisting Barnet Homes and the London Borough of Barnet in dealing with this issue.

There has been excellent and seamless joined up working here by staff from all the relevant organisations. The emergency and business continuity plans worked smoothly and the commitment of all staff has been exceptional.

**Question 23**

**Councillor Jack Cohen**

Will you join with me in thanking the Emergency Services, Council Officers and Staff at Barnet Homes for their prompt and professional response in dealing with the fire at Garth House?

**Answer by Councillor Lynne Hillan**

The Leader and I attended Rosa Friedman on Sunday morning to visit the residents that had been decanted. The Council Officers and staff from Barnet Homes had the situation under control, reassuring residents and families, contacting relatives, organising emergency accommodation, practical assistance and counselling and reassurance.

Councillor Freer and I went on to Garth House where our excellent emergency services had the situation under control. I would certainly join with you in thanking everyone and add my gratitude to the first Fire Crew on site who assisted all residents out of danger without any casualties.

**Supplementary Question 23****Councillor Jack Cohen**

Thank you Councillor Hillan, I agree it was an all round professional effort in dealing with the fire at Garth House. Councillor Hillan as you know, all of the Garth House residents enjoy living in NW2, where they have a good local network of friends and support services. Will you confirm that it is the Council's intention to re-provide accommodation for the residents on or close to the existing site, and if not, why not?

**Answer by Councillor Lynne Hillan**

The majority of the residents have now been re-housed and they've been re-housed in places that they are perfectly happy with and that they actually chose.

**Question 24****Councillor Charlie O-Macauley**

What penalties are charged by the Council to building contractors who fail to carry out their duties within the agreed timeframe, and if none are charged why not? [For example, the refurbishment of Burnt Oak Library the completion date for which was not met].

**Answer by Councillor Mike Freer, Leader of the Council**

The typical form of contract used with building contractors is the Joint Contracts Tribunal ("JCT") range. Within these and other contracts is usually the facility for Liquidated Damages (LD's) should contractors fail to achieve an outcome within agreed timescales. However, LDs cannot be punitive and have to be set accordingly in respect of value based on the nature of the construction. If making a claim for Liquidated Damages, the Council would need to demonstrate that it had suffered loss as a result of the contractor's breach of contract. This is the mechanism open to the Council and is used in accordance with the particular contractual obligations for the scheme in question.

In respect of Burnt Oak Library delays were experienced due to a number of incidents outside the contractor's control. Asbestos was found which resulted in a 3 week delay; inclement weather delayed works to the entrance and some specialist items such as a curved glass entrance required extra time to ensure quality and safety was ensured. None of these elements were directly attributable to the contractor and, I am sure you would agree, were necessary works.

**Question 25****Councillor Brian Salinger**

The Cabinet Member will recall a question that I asked him in January about the increasing problems of prostitution in the Borough. Will he join me in welcoming the decision of the Times Group of Newspapers to cease accepting advertisements for so called 'personal services'?

**Answer by Councillor Brian Coleman**

I am unconvinced that the two matters raised by the Member in his question are related.

**Supplementary Question 25****Councillor Brian Salinger**

In January, the Cabinet Member gave an equally flippant response to a similar question but did undertake to discuss the matter with the Borough Commander. Can he tell Members if he did ever raise the matter, as the Borough Commander appears to have no recollection of the issue ever being raised with him? Does the Cabinet Member accept that the police seem to take a different view having been quoted in local papers confirming the widespread belief that prostitution is closely linked to people trafficking, crime and drugs and, will he now, on behalf of the Council, press the Barnet Press Group to follow the lead of the Barnet Times and stop accepting adverts for personal services?

**Answer by Councillor Brian Coleman**

No.

**Question 26****Councillor Susette Palmer**

Who is monitoring the whereilive.com website?

**Answer by Councillor Mike Freer, Leader of the Council**

All content is moderated by the Council’s Social Media Manager prior to being published.

**Supplementary Question 26**

**Councillor Susette Palmer**

I’m glad to hear Councillor Freer’s comment to the earlier question by my colleague, Councillor Cohen, on this. It was a very unfortunate incident. I am only asking this question now because I asked it several times by e-mail to various Officers right up to the top, and did not get a reply. I am actually getting fed up, and I don’t know if I’m the only person here, with Council Officers who read e-mails and then manifestly don’t reply to them. It just means that you have to ask them, on these yellow pages here, and then it means that the Cabinet Member has to waste time in this Committee answering them. Thank you for your answer, I do notice that the answer you gave me and the answer you gave Councillor Cohen are not quite the same, could you elucidate?

**Answer by Councillor Mike Freer, Leader of the Council**

I’m delighted. If Councillor Palmer would like a master class in social networking and the use of new technology I’ll happily have one arranged. The moderator is the first level of editing and of course there is then a second level of editing, so they are indeed part of the same process, not different.

**Question 27**

**Councillor Barry Rawlings**

Would the Cabinet Member give me an update of the latest position with regards to the back-log in billing users of both meals on wheels and homecare services? Is the billing for these services now fully up to date, and if not, why not?

**Answer by Councillor Lynne Hillan**

Home care and meals invoicing performance is monitored regularly in service and reported to CRC.

**Home Care**

As At...	less than 6 weeks			6-10 week			11-14 weeks			15 weeks or longer		
	Provid ers	Clie nts	Valu e	Provid ers	Clie nts	Valu e	Provid ers	Clie nts	Valu e	Provid ers	Clie nts	Valu e
13 Octobe r 2008	4	190	£49,0 20	4	396	£136, 224	4	259	£139, 213	2	148	£101, 824

The invoicing backlog on homecare has improved consistently over the last six months in particular over the past five weeks, where there has been a 20% reduction in the overall arrears in billing. Whilst the current backlog will improve further it is better than it has been at any stage over the past 18 months.

A couple of home care providers have had particular difficulties due to one-off information systems technicalities and these have distorted the overall position. These have now been resolved.

The current position can be further improved and dedicated Officers are working with each provider. The position is monitored each week by a team of Officers and considered monthly by the Social Services management team.

Furthermore it should be noted that clients are invoiced on the agreed actual number of hours and minutes of care received each week and hence now receive a far more accurate and fairer invoice than in previous years. Similarly as a result of the new systems, the Council now only pays for the actual hours of care delivered, rather than on hours commissioned, and this has had a discernable positive impact on expenditure.

## **Meals**

The backlog is now stable at between 6 to 8 weeks. With monthly invoicing and the time necessary to resolve any queries it is not realistic for this to reduce any further.

The possibility is however being examined of moving to weekly invoicing which will improve on this further.

## **Supplementary Question 27**

**Councillor Barry Rawlings**

Does the Cabinet Member understand the distress that this has caused to vulnerable users and can she assure Members that it will never happen again?

## **Answer by Councillor Lynne Hillan**

You all know the problems that we had with Swift sometime last year. All users were written to and we keep in touch with them constantly. We've had very very few complaints, so I don't know where you're finding all these people who are so upset.

## **Question 28**

**Councillor Brian Salinger**

Will the Cabinet Member outline exactly what improvements to the North Circular Road he is expecting to be carried out over the next 2 / 3 years?

## **Answer by Councillor Andrew Harper**

Transport for London have two improvement schemes which will affect the North Circular Road in the Borough in the next 2/3 years.

The first is the improvement of the section through Bounds Green. This scheme involves widening Telford Road to two lanes in each direction, upgrading the junctions with pedestrian facilities, removing two pedestrian footbridges and installing a bus lane between the A10 and Green Lanes. The planning processes for this scheme are complete and work is due to start in early 2009 with the replacement work of a gas main.

The second scheme is at Henley's Corner. TfL are proposing an at-grade scheme which will provide pedestrian facilities across the A406 while minimising the impact on traffic. The scheme will increase the separation between each carriageway of the A406 and A598 and create areas in the central part of the junction where vehicles turning right can wait safely. The layout is a combination of a roundabout and crossroads and has been described as a 'half hamburger'.

The Council is working with TfL on the development of the scheme to ensure it provides pedestrian facilities without having an undue impact on traffic. TfL are currently working on traffic models of the junction to confirm the robustness of their design. The scheme will cost in the order of £8.5m. Subject to statutory procedures, TfL are aiming for construction of the scheme to start in 2010/11. This work would overlap with the work at Bounds Green and therefore it will be particularly important for the temporary traffic management arrangements to be carefully planned for both schemes.

## **Supplementary Question 28**

**Councillor Brian Salinger**

Does the Cabinet Member agree that whilst these measures may make a marginal difference, there will still be long delays and that the knock on effects of rat running traffic in roads close to the North Circular, will continue for as long as a bottle neck exists where three lanes are squeezed into two? The Cabinet Member welcomed the promised improvements, but will he please confirm that the Council's policy continues to be one of demanding the full upgrading of the North Circular through the Borough and through the Bounds Green stretch to the A10? If the policy has changed can the Cabinet Member tell when and where the policy was changed?

**Answer by Councillor Andrew Harper**

I could say to Councillor Salinger that I'm not aware that there's been any change of policy necessarily as a result of resource constraints and like all sorts of other things, we have to follow a step-by-step approach. This Administration is very conscious of the difficulties faced by many of our residents and others in negotiating those stretches of road, and we are continuing to be in very active discussions with Transport for London as to what might be done about them. I may say that those discussions are now being held in a much more constructive spirit since the election of Mayor Johnson back in May.

**Question 29**

**Councillor Monroe Palmer**

Can the Administration explain the statement issued about the investments in Icelandic Institutions which said "The cash for the (Council's) pension fund is managed in-house and there will be an exposure to the pension fund, .... since all funds are pooled for investment purposes ...". How does this tie up with the decision of 10 September Pensions Fund meeting which agreed that the cash funds of the pension fund be separated from the funds of the Council?

**Answer by Councillor Mike Freer, Leader of the Council**

Councillor Palmer may be confusing two separate decisions. The Pension Fund Committee requested that the cash be accounted for in separate accounts but is pooled for investment purposes thus achieving economies of scale.

**Supplementary Question 29**

**Councillor Monroe Palmer**

I am not confusing the two decisions which you refer to here. The external auditors asked the pension fund to separate its bank accounts from that of the Council. In my view that means no pooling of bank accounts. Will you clarify with the external auditors this point, and invite them to the December Pension Funds meeting so that from your view and my view, we can actually see what they did mean? I know what they mean, you obviously think very differently, and also how does your answer, which talks of investment, tie in with the answer from the Treasury Manager strategic finance of this Borough who says "I can confirm that the pension fund has no investment holding in either Icelandic banks or Icelandic companies".

**Answer by Councillor Mike Freer, Leader of the Council**

I'm happy to, there's no confusion. The accounting of the deposits and investments from the pension fund, the two are separate mechanisms, are accounted for in separate bank accounts, but for investment and deposit purposes are pooled. That is, in my view, entirely in accordance with the guidance from the advisers. The Treasury Management team were quite right, as I have said, this Council did not invest in Icelandic banks, i.e. we did not buy or hold shares or stock in any Icelandic banks. That is not the same as a deposit, and unfortunately the two words have become interchangeable. It's quite clear, no investment in Icelandic stocks, but yes we had money on fixed term, fixed rate deposits.

**Question 30**

**Councillor Alan Schneiderman**

Was the deposit of £27.4m of the Council's money in two Icelandic banks a "good use of resources"?

**Answer by Councillor Mike Freer, Leader of the Council**

At the time the deposits were made there was no problem with these banks and all advisors found no cause for concern. Your silence on the Council’s Treasury Management Policy hitherto, would support that view.

**Supplementary Question 30**

**Councillor Alan Schneiderman**

Does Councillor Freer accept that the unusual borrowing to invest decision was one that he personally approved, and this has been one that has led to Barnet’s potential loss from the deposit in Icelandic banks being one of the highest of all authorities and it wasn’t necessary?

**Answer by Councillor Mike Freer, Leader of the Council**

Councillor Schneiderman unfortunately yet again confuses a number of issues in the attempt to find a good headline. The decision to borrow from the public works loan board at a very attractive rate of interest in preparation for the PSCIP program in advance to capital expenditure was a good decision. To put that money on deposit at a higher rate was equally a good decision. It was not a speculative decision and in terms of a good use of resources, yes. Having said that, Mr Mayor, it has not left us to be exposed, the level of exposure is due to the fact that as holding large funds we have to use a large number of counter parties, 32 at the last count. That, in turn, spreads risk and only 8% of our investments, of course, are or were in those two Icelandic banks. The solution perhaps to pull out of all overseas banks, which I know that the previous administration didn’t follow, would of course, where would we put it, Royal Bank of Scotland, Bradford & Bingley, Burnley Building Society, HBOS. So, I’m a little surprised to suggest that in hindsight this was speculative and a bad use of resources without coming up with any alternatives of what the Treasury Management policy should have said, because of course they said nothing.

**Question 31**

**Councillor Daniel Thomas**

Could the Leader advise how many Freedom of Information requests have been received in the past 6 months and if the volume is spread across many individuals or a few?

**Answer by Councillor Mike Freer, Leader of the Council**

We have processed 205 Freedom of Information requests in the last 6 months. Some 36% of the request come from 5 main sources:

Ranking	FOI Requests Clients	Number of requests submitted	Percentage of requests
1	David Miller	29	14%
2	Daniel Hope	21	10.3%
3	Newspapers, BBC, Channel 4	10	5%
4	MP’s	8	4%
5	John Connor Press agency	7	3.4%

**Supplementary Question 31**

**Councillor Daniel Thomas**

Will the Leader, please tell Council what the average cost is for handling Freedom of Information requests?

**Answer by Councillor Mike Freer, Leader of the Council**

Certainly, the Freedom of Information requests that I’m involved in cost about £150 per request to handle.

**Question 32**

**Councillor Monroe Palmer**

Is the probable loss of over £27million of Council Tax Payers funds on investments in two Icelandic banks a Conservative created black hole of memorable proportions? How does Barnet's Icelandic speculation compare with the investments of all other local authorities? Was the Conservative Administration's policy of investing in fixed term investments purely to gain a small increase in the rate of interest a disastrous decision which will affect either the level of service and / or Council tax and / or level of Reserves?

**Answer by Councillor Mike Freer, Leader of the Council**

Councillor Palmer is of course an expert on financial black holes having been party of an £11m funding gap due to a pre-election spending spree. The spending spree which weakened the financial standing of the Council was AGAINST Officer advice a very important distinction over the current problem with deposits in Icelandic Banks which were made following (not against) advice. The Council has not speculated in Icelandic investments but made fixed term deposits having followed independent external advice in line with the Council's prudent Treasury Management Strategy. A strategy that no Opposition Councillor commented on, raised concerns about or called in for scrutiny. Indeed Councillor Palmer as a Member of the Pension Fund Committee and its predecessor the Pension Advisory Panel has consistently acquiesced to the investment strategy.

It is worth remembering that making deposits in non-UK banks and financial institutions has been standard practice of this Council for many years, including during the period of Labour / Liberal Democrat coalition.

**Supplementary Question 32**

**Councillor Monroe Palmer**

I'll ignore the misinformation that goes on and on about the so called black holes, which are an historical argument about budgets over 6 years ago. Councillor Freer has introduced it completely erroneously in answering my question. But, even if it were true the creation of an Icelandic black hole by this Administration is a matter of fact. Would Councillor Freer accept that this Council does not publish details of where we deposit cash and so opposition Councillors would not see these details, and to say that we should review them and control them is nonsense because those figures are not published in the Treasury Management strategy. Would he not concede that, as the Director of Resources has confirmed, there has never been any call previously to publish details of where we deposit cash? So accusations, Mr Mayor, on opposition Councillors that we should have known where the money was when it's not published is quite ridiculous.

**Answer by Councillor Mike Freer, Leader of the Council**

The role of opposition Members is to try and hold the Administration to account. That means asking pertinent questions, and indeed Councillor Palmer when he accompanied me down to Schroeder's, was more than happy to take part in their hospitality, but didn't see the opportunity of asking any pertinent questions on cash management of how they foresaw the banking sector. Indeed, you know if the Chairman of Audit and risk doesn't see fit to ask the relevant questions then I don't see why the Administration should be castigated if the opposition Members, who many of them of course collect special responsibility allowances of their own for their responsibilities, don't ask pertinent questions, that's hardly our fault for a weak opposition.

**Question 33**

**Councillor Ross Houston**

Will the Cabinet Member for Crime advise how many Police Officers will be cut in Barnet as a result of the first Boris Johnson budget?

**Answer by Councillor Brian Coleman**

None.

**Supplementary Question 33**

**Councillor Ross Houston**



Can the Cabinet Member confirm how many staff at the fire service in Barnet will be cut as a result of the first Boris Johnson budget?

**Answer by Councillor Brian Coleman**

Not a single one.

**Question 34**

**Councillor Robert Rams**

Economic commentators report the UK is now in recession. Has the Council seen any indication that there has been a fall of in NNDR collection?

**Answer by Councillor Mike Freer, Leader of the Council**

To date we are aware that two major retailers have cancelled their direct debits. One advised us and agreed a course of action to remedy their arrears, the other has not made contact with the Council. To date collection is some 1.5% down suggesting that the recession is already hitting the Barnet economy and given the worsening of the national picture I would expect local conditions to worsen.

**Question 35**

**Councillor Duncan Macdonald**

With regard to the Leader's "Leader Listens blog" – Is this blog costing the taxpayer any money? If so, how much?

**Answer by Councillor Mike Freer, Leader of the Council**

The cost of the Leader Listens site amounts to £400. This includes the cost of externally hosting the site.

**Supplementary Question 35**

**Councillor Duncan Macdonald**

Why have you spent £400 of Council taxpayers money on a blog when you could easily have had one for free?

**Answer by Councillor Mike Freer, Leader of the Council**

Councillor Macdonald unfortunately falls into the trap of so many bloggers. He confuses the role of the Hendon Times blog, which of course was to produce a somewhat light-hearted look at local government, which was more about my views and my comments, for the delight and delectation of the three readers. However, of course, the Leader Listens aims to have a far wider audience and actually is meant to allow residents to pose questions which of course are more pertaining to the issues raised in the highly successful and popular Leader Listens events.

**Question 36**

**Councillor Julie Johnson**

No consultation took place before it was decided on cost grounds that a gas supply would not be provided when the West Hendon Estate is regenerated. What plans are there for people many elderly who have only ever used gas for cooking, and are residents who have bought new gas equipment going to be compensated at the appropriate time?

**Answer by Councillor Lynne Hillan**

In approving the development master plan, the Greater London Authority required the new development to be sustainable and energy efficient and they will need to approve the strategy. The proposal from Barratt Metropolitan LLP is to provide a combined heat and power system as part of a comprehensive energy strategy. The system will supply space heating and water heating to each flat through an individual meter, and does not require a gas supply to individual flats.

The supply of gas to each flat just for cooking would be prohibitively expensive and would significantly further detract from the viability of the project, so preventing it from proceeding.

Although this energy strategy has not yet been fully approved by the Council, it is accepted that it is the best option and meets current high sustainability standards.

Residents who have previously acquired gas cookers will be able to replace them with electric cookers with the costs being met through the disturbance payments when they move to their new homes. The developers have agreed to hold further workshops to explain the strategy and the benefits of the proposals. Additionally, Barnet Homes, the Council and the Developers will work closely to assist residents into their new homes as the project proceeds.

### **Supplementary Question 36**

**Councillor Julie Johnson**

Thank you for your answer Councillor Hillan. I am pleased to hear there will now be consultation with residents. However, the cost of replacement electric cookers which are very expensive should not be met from the disturbance payments. Electric appliances were not included in the specific discussion and agreement between the residents planning and design group and Barratt Metropolitan. It now seems that this cost is going to be imposed retrospectively? This is most unfair.

### **Answer by Councillor Lynne Hillan**

I'm not sure there was a question in there, was there? But, this will be subject to consultation with the residents. I'm sure these points could be raised then.

### **Question 37**

**Councillor Tom Davey**

Would the Cabinet Member for Resources confirm that the interest earned from investments has been used to support Council services and reduce demands on Council Tax payers?

### **Answer by Councillor Mike Freer, Leader of the Council**

In 2007/08, gross interest earnings amounted to £16.2m, and a reduction in the average rate of interest achieved on deposits would have had a considerable effect on the Council's outturn and final level of balances at the year end. This represented an average 5.91% return on deposits, and in order of magnitude should be recognised as funding the entirety of the Library Service (£7.2m), Refuse Service (£5.4m), General Fund Housing Service (£1.6m), and Planning & Environment Service (£1.6m), with some funding left over.

### **Question 38**

**Councillor Duncan Macdonald**

With regard to the Leader's "Leader Listens blog" – If so, is it an appropriate use of public funds given that Councillor Freer already has a free blog on the Barnet Times?

### **Answer by Councillor Mike Freer, Leader of the Council**

The Leader Listens blog serves a different purpose to the blog hosted by the Hendon Times. The Leader Listens site allows me as Leader of the Council to obtain feedback from residents who attend the many meetings I hold around the Borough and provides the ability to share video footage of the meetings for those who were unable to attend. This increases democratic participation and engagement to a wider proportion of the Borough's residents.

You are also out of date as I have discontinued my Hendon Times Blog.

**Supplementary Question 38**

**Councillor Duncan Macdonald**

There was no announcement that you'd discontinued your blog on the Hendon Times. How much is it costing to video and edit each meeting that we're putting on the Leader Listens site?

**Answer by Councillor Mike Freer, Leader of the Council**

I'm not responsible for the editorial policy of the Hendon Times, I wish I were. I certainly advised the editor of the Hendon Times some time ago that I wished to cease the blog, it was their decision as and when to take it down. In terms of the cost of using videos for the Leader Listens, my understanding is there is no additional cost as that is absorbed within the normal communications budget, it's normal duties for one of the communications staff.

**Question 39**

**Councillor Barry Rawlings**

Would the Cabinet Member congratulate Finchley Memorial Hospital on its Centenary and welcome its future plans?

**Answer by Councillor Helena Hart**

Nothing would give me greater pleasure than to congratulate Finchley Memorial Hospital on its Centenary and I'm sure that every member of this Council would wish to join me in highlighting its proud record of service to the whole of the Borough over the last 100 years. The affection with which Finchley Memorial is held by patients and their families was amply demonstrated by the hundreds of people from far and wide who joined the Mayor at the Grand Centennial Celebrations at the Hospital on Saturday 18 October.

We have also welcomed and been most supportive of its future plans - one of the rare bright spots in plans for health services locally – including agreeing a planning specification for the site which facilitates the development of the new hospital. The PCT has also been successful in securing £9.9 million from the Department of Health Programme Investment Board for enabling works for the new Hospital and an outline business case for the scheme has been submitted and approved by NHS London.

Aided by our good relations with neighbouring Camden, the PCT has purchased the land required from Camden Council. These playing fields have not been used for over 16 years and will bring substantial local benefit if brought back to public use. The PCT plans to build on a portion of the site and use the remaining land to promote the general health and well-being of the local population. It will now begin a phase of much more detailed planning over the next year which will require a greater level of engagement of stakeholders. It is intended to open the new hospital in 2012.

At a time when other Boroughs are seeing hospitals closed and services cut, it is with the greatest pleasure and anticipation that here in Barnet – as a result of all our Administration's continued support and joint working and representations with the PCT – we will be able to welcome a brand new Finchley Memorial Hospital to carry on and extend the sterling service it has given residents over the last 100 years.

**Question 40****Councillor Daniel Webb**

Would the Cabinet Member for Resources confirm what percentage of the Council's cash reserves were held in Icelandic banks?

**Answer by Councillor Mike Freer, Leader of the Council**

Approximately 8%.

**Supplementary Question 40****Councillor Daniel Webb**

Would the Leader let me know why Councils such as Barnet keep so much money in reserves?

**Answer by Councillor Mike Freer, Leader of the Council**

Of course, when we took over, the Council reserves were at an all time low and of course the whole purpose of reserves is to allow the Council to absorb shocks and unforeseen events, and that can include looking after additional looked after children or an extra demand in adult care. But, of course, I am pleased that this Council has been able to rebuild its reserves as well as improving services, as well as having clean bills of health from the auditors, as well as achieving a four star authority. At the same time, Mr Mayor, I would point out that these reserves are there through the prudent management of this Administration, contrary to every attempt by the Liberal Democrat Party to wipe out reserves in every budget they produce.

**Question 41****Councillor Duncan Macdonald**

With regard to the Leader's "Leader Listens blog" – The Council has received a government grant of £100K to spend on these internet ideas. Is it appropriate to spend the money promoting the Leader rather than the Council?

**Answer by Councillor Mike Freer, Leader of the Council**

The £100,000 received from the Department for Communities and Local Government is for a wider programme of activities and is not solely for 'Internet ideas'. Social media forms one element of our behavioural change initiatives. None of the funding from the Department for Communities and Local Government has been spent on the Leader Listens site.

**Supplementary Question 41****Councillor Duncan Macdonald**

Behavioural change initiative, I really would like to know what that is?

**Answer by Councillor Mike Freer, Leader of the Council**

Behavioural change is, well there are two initiatives, one I will refer the Member to work being done by DCLG, but it's more commonly known as Nudge.

**Question 42****Councillor Alan Schneiderman**

Will the Council be amending its treasury management investment criteria so that investments are not endorsed solely on the basis of ratings from credit rating agencies?

**Answer by Councillor Mike Freer, Leader of the Council**

Cabinet made changes to the TM strategy on 23 October. The Council does not have the expertise or resources to undertake detailed forensic analysis of all potential counterparties itself, so a heavy reliance on the credit rating agencies is unavoidable.

**Question 43****Councillor Joan Scannell**

Would the Cabinet Member for Resources confirm what advice Officers take when deciding in which financial institutions to place deposits?

**Answer by Councillor Mike Freer, Leader of the Council**

Treasury management activity is governed by the annual Treasury Management Strategy, which is approved each March by the Council's Cabinet Resources Committee. The strategy is prepared in accordance with the CIPFA Code and forms an important part of the overall financial governance framework of the Council, which is taken into account each year by the external auditor as part of the Use of Resources assessment and general audit work. In addition the Council uses external specialist treasury advisors.

One of the key elements of the strategy is the management of risk through an approved counterparties list the Council should place deposits with, the individual limits on the deposits placed with any counterparty, and the mix of short and long term deposit periods used. This is all designed to ensure the Council does not put all its eggs in one basket (e.g. the Western Isles Council and BCCI scenario), and to ensure that the Council achieves a decent return on deposits.

The strategy states that the criteria used by the Council to select the counterparties with which it can place deposits are based on the long term and short term credit ratings used by the main credit rating agencies, Fitch, Moody's and Standard & Poors. The approved ratings at the time deposits were made were:

- Short term – 'F1' (Fitch) or 'P-1' (Moody's)
- Long term – 'A' (Fitch) or 'A1' (Moody's)

A Fitch short-term rating of 'F1' is defined as being best quality grade, indicating strong capacity for timely payment of financial commitments. The strongest possible credit rating for short term is 'F1+' which is defined as being best quality grade, indicating exceptionally strong capacity of obligor to meet its financial commitments.

A long-term rating of 'A' denotes expectations of low credit risk and the capacity for payment of financial commitments is considered strong. This capacity may, nevertheless, be more vulnerable to changes in circumstances or in economic conditions than is the case for higher ratings. The highest credit rating of 'AAA' is the highest credit quality and denotes an exceptionally strong capacity for payment of financial commitments usually Government issued debt. 'AA' credit ratings denote expectations of low credit risk and indicate very strong capacity for payment of financial commitments. The lowest investment grade rating is 'BBB' which indicates that there are currently expectations of low credit risk. The capacity for payment of financial commitments is considered adequate but adverse changes in circumstances and economic conditions are likely to impair this capacity. Fitch issue further credit ratings below 'BB' that range to 'NR' (not reported), these grades are known as non-investment or speculative grades.

#### **Supplementary Question 43**

**Councillor Joan Scannell**

Thank you Leader for your reply. Will you please clarify, do Officers ask Members to assist in the selection of institutions?

#### **Answer by Councillor Mike Freer, Leader of the Council**

The Members set the policy, the Officers make the deposits.

#### **Question 44**

**Councillor Duncan Macdonald**

With regard to the Leader's "Leader Listens blog" – Has the Council taken on new staff to run this? If so, who will pay their wages when the grant money has gone?

#### **Answer by Councillor Mike Freer, Leader of the Council**

The Council has not employed any new permanent staff to run the Leader Listens site.

#### **Supplementary Question 44**

**Councillor Duncan Macdonald**

What existing staffing resources does this consume and have you employed any non-permanent staff to run your blog?

**Answer by Councillor Mike Freer, Leader of the Council**

As I've already mentioned, the Leader Listens blog is a part of routine duties of an existing member of the communications team.

**Question 45**

**Councillor Zakia Zubairi**

What is the Administration doing to re-furbish play areas around the borough that have been left to wither on the vine?

**Answer by Councillor Andrew Harper**

Play areas are inspected and maintained to ensure they conform to safety standards and are suitable for use. Sadly, they are sometimes subject to vandalism which results in equipment requiring replacement as well as the need for replacement where equipment has come to the end of its life. Replacement happens as and when required. Where repeated vandalism occurs to the same equipment this may not be replaced for a period of time and in some cases removed in its entirety.

Investment in play areas is focused on Premier Parks and secondly other playgrounds in the borough as per the Premier Parks Strategy. Investment is sourced from the Greenspaces budget, s106 monies and external grants for which the Council bids.

**Supplementary Question 45**

**Councillor Zakia Zubairi**

How much has the Council invested in upgrading, refurbishing and replacing play facilities and equipment in Barnet in the last year and which facilities in which areas have been included in this programme?

**Answer by Councillor Andrew Harper**

That's a rather detailed question, I don't have all of that to hand but I shall be happy to write to the Member.

**Question 46**

**Councillor Sachin Rajput**

Would the Cabinet Member for Resources please re-assure Council that work is undertaken to help pensioners receive any Council Tax Benefit they may be entitled to?

**Answer by Councillor Mike Freer, Leader of the Council**

Currently our benefit take up campaign includes:

- Posters have appear on 'six sheet' boards (these are located near town centres and shopping areas) from Wednesday 9 September to 6 October. Further posters will appear at bus stops from 3 November to 1 December. So the entire campaign will run 9 September 2008 to 1 December 2008.
- We are currently running extra advice surgeries throughout the Borough.
- We are currently working with Welfare Rights on pensioner take up. We got a list from the DWP of pensioners in the area that do not appear on our benefit extract.
- We work with the Homeless Forum group.
- We work with Temporary Accommodation on providing DHPs to claimants in exceptional hardship circumstances.
- We have applied additional resource to the telephones to assist in expert advice re benefit.

**Supplementary Question 46**

**Councillor Sachin Rajput**

Mr Leader, I'm grateful for the response given. If I can ask, and it may be premature, do we have any information as to whether or not the campaign referred to and the response has been productive, I'm sure it has, but it may be slightly early to respond but if you do know I'd be grateful?

**Answer by Councillor Mike Freer, Leader of the Council**

At this stage it is too early to say but clearly we are working hard to identify those residents who need support, but also to ensure that people are aware of it. Once, I know the details of the outcome of the campaign I'll let the Councillor know.

**Question 47**

**Councillor Duncan Macdonald**

With regard to the Leader's "Leader Listens blog" – Members of the public have posted messages to Councillor Freer on the new blog but they have not been uploaded. Is Councillor Freer censoring messages which he doesn't like? What is the point of inviting people to join in, if he is not going to reply?

**Answer by Councillor Mike Freer, Leader of the Council**

The Council follows best practice online participation guidance as developed by organisations such as the British Broadcasting Corporation and IBM. This includes the right for the authority to moderate out content deemed harmful, threatening, abusive or defamatory.

As at 17 October 2008 only one comment which was deemed inappropriate against the criteria has been received and therefore the content was not published. Therefore your assertion is incorrect.

**Supplementary Question 47**

**Councillor Duncan Macdonald**

As no comments have been published does that mean that only one comment has been received. Also I've seen the censored comment and would like to know which bit of it he didn't like?

**Answer by Councillor Mike Freer, Leader of the Council**

At the time of answering the question only one comment had been received, which as it says here was deemed to be unsuitable. But, as of today, there has been a string of new posts which are currently being dealt with and the responses will be posted shortly.

**Question 48**

**Councillor Anne Hutton**

Will the Cabinet Member guarantee that the (next?) phase of Sure Start Children's Centres will be implemented by this Authority?

**Answer by Councillor Fiona Bulmer**

Good progress continues to be made in delivering children's centres that provide services that meet the needs of families in Barnet and options for phase 3 centres are being developed.

**Supplementary Question 48**

**Councillor Anne Hutton**

Thank you Councillor Bulmer for your reply. Does this mean that the Council are definitely going to implement phase 3 of the Sure Start programme?

**Answer by Councillor Fiona Bulmer**

As I said options for phase 3 are being developed.

**Question 49**

**Councillor Daniel Thomas**

Would the Cabinet Member for resources detail any concerns raised by Opposition Councillors over the Council's Treasury Management Policy or indeed over any of the Council's cash deposits?

**Answer by Councillor Mike Freer, Leader of the Council**

No concerns were lodged. Neither was the Treasury Management Policy called in for scrutiny by any opposition member.

**Supplementary Question 49**

**Councillor Daniel Thomas**

I'd like to ask the Leader does he agree with me that attacks by opposition Members are unjustified given that no concerns were raised at the time?

**Answer by Councillor Mike Freer, Leader of the Council**

I think, that as Councillor Thomas says, the silence was certainly not golden, but it was certainly telling on their dereliction of duty.

**Question 50**

**Councillor Charlie O-Macauley**

When will the Administration re-introduce a Cabinet Committee whose sole remit is to ensure equalities are properly monitored in the implementation of Council policy?

**Answer by Councillor Mike Freer, Leader of the Council**

This Administration has made more progress on equality and diversity since the subject became a personal responsibility of mine with regular progress reported through the many reports approved by Cabinet. This is far more effective than the previous talking shop approach of a Cabinet Sub-Committee that achieved little.

**Supplementary Question 50**

**Councillor Charlie O-Macauley**

I'm really interested in this. How much time per week does Councillor Freer give to his personal responsibility in terms of monitoring progress on equalities and diversity?

**Answer by Councillor Mike Freer, Leader of the Council**

Every waking hour Mr Mayor.

**Question 51**

**Councillor Gill Sargeant**

Will the Cabinet Member outline the timescales for development of additional community and youth provision in the Colindale Regeneration Programme?

**Answer by Councillor Fiona Bulmer**

The Colindale Area Action Plan will provide the framework to guide growth in Colindale over the next 20 years and will identify the range of facilities necessary the establishment of a sustainable community.

Expanded capacity for local primary schools, contributions to improvements to secondary school provision in the wider area, youth provision, open space and recreational improvements and new health facilities and other related community infrastructure will be delivered as new developments come forward.

It is too early at this stage to define when particular facilities will be provided but the Area Action Plan Draft Preferred Options Report, currently out to consultation sets out a broad programme for the delivery of the major development sites in the area. The specific nature of the community benefits and their provision will be clarified as detailed master plans are prepared for each of the key sites in consultation with the community over the next 2 to 3 years.

**Supplementary Question 51**

**Councillor Gill Sargeant**

I just wanted to say that at the present time in the Colindale Area Action Plan, there is no specific youth provision outlined?



**Answer by Councillor Fiona Bulmer**

It's far too soon to go into that kind of detail but I've noted her comment.

**Question 52**

**Councillor Gill Sargeant**

Can the Cabinet Member tell me what the date is for completion of Aerodrome Road works?

**Answer by Councillor Andrew Harper**

I assume Cllr Sargeant is referring to the Aerodrome Road Bridge Replacement project. The current phase of work involves:

- a) The building of the abutments and wing walls of the bridges in blockwork / stonework, and
- b) The diversion of all major utilities on the widened part of Aerodrome Road (south side).

Currently there two traffic lanes, one in each direction, running on the existing or old Aerodrome Road surface.

Once all the utilities are diverted, the new road construction on the south side will be laid above them. This will allow the next phase of the works, starting with the diversion of the traffic on the newly constructed surface. Unfortunately, due to various restrictions as a result of utility positions, it will only be possible to have one traffic lane (westbound) and it will be necessary to reinstate the previous one way traffic flow system. The next phase switchover is expected to be done before Christmas and it will free the remaining width of Aerodrome Road for excavation and construction at a lower level, to achieve the required headroom under the bridges. The project is envisaged to be completed in April 2009.

**Question 53**

**Councillor Gill Sargeant**

Will the Cabinet Member tell me what opportunity will there be for additional consultation for any Sheaveshill Road extension?

**Answer by Councillor Andrew Harper**

The proposed extension to Sheaveshill Road is a measure being considered as part of the Colindale Area Action Plan (AAP), where we are looking to secure improvements in movement across the area to help facilitate the projected increase in residential units. The option to extend Sheaveshill Road is included in the Draft AAP Preferred Options report. Consultation on this document has just begun and will run for seven weeks including two public exhibitions. Comments received will be carefully considered and a revised Preferred Options AAP will be prepared ready for submission to the Planning Inspectorate. At that time there will be further public consultation leading up to the AAP Examination in Public, to be held in the latter part of 2009.

# London Borough of Barnet

## Conclusions and Statement of Reasons

An Investigation by PricewaterhouseCoopers LLP into the Sale by the London Borough of Barnet of the Land known as Underhill to Barnet Football Club (Holdings) Limited, as part of the Audit of the Accounts for the Year ended 31 March 2002

*8 October 2008*

<b>Contents</b>	<b>Page</b>
Section 1 – The Auditor's Responsibility and the Law .....	1
Section 2 - The Nature of the Objections .....	5
Section 3 – Our Approach .....	11
Section 4 - Chronology of Events .....	13
Section 5 – Background .....	16
Section 6 – Our Conclusions on action under s17 Audit Commission Act 1998.....	32
Section 7 – Our Conclusions on action under s18 Audit Commission Act 1998.....	47
Section 8 – Our Conclusions under s8 Audit Commission Act 1998 .....	89
Appendix 1: Document references .....	92
Appendix 2: Key individuals.....	96

# Section 1 – The Auditor's Responsibility and the Law

## Introduction

1. The Audit Commission Act 1998 ('the 1998 Act') establishes the statutory framework for the audit of the accounts of local authorities. It also provides for there to be a Code of Audit Practice ('the Code'), renewable every five years, which sets out the way in which auditors are to perform their functions. For the purposes of this investigation, the relevant Code is the one that came into effect in March 2000, and was amended in March 2002. It provides that auditors are to review and report on the financial aspects of the audited body's corporate governance arrangements, its financial statements, and aspects of its performance management. Schedule 1 also notes the special powers and duties of auditors, including the right granted by the 1998 Act to members of the public to question auditors and make objections to the accounts.
2. Section 16 of the 1998 Act provides that:  
  
*'a local government elector for an area to which the accounts relate, or any representative of his, may attend before the auditor and make objections-*
  - a) *as to any matter in respect of which the auditor could take action under section 17 or 18 of the Act; and*
  - b) *as to any other matter in respect of which the auditor could make a report under section 8.'*
3. At the time of the events subject to this audit, the Audit Commission for Local Authorities and the NHS in England and Wales had appointed PricewaterhouseCoopers LLP as the external auditor of the London Borough of Barnet ('the Council'). In the course of our audit of the accounts for the year ended 31 March 2002, several such objections were made to us. They concern the sale of the freehold interest in a football stadium known as the Underhill stadium by the Council to the Barnet Football Club Holdings Limited ('the Company'), the majority shareholder of Barnet Football Club Limited ('the Club'). We have set out the nature of those objections in section 2 of this document.
4. As required by the 1998 Act and the Code, we have conducted a detailed audit into the matters raised with us. Our approach is summarised in section 3 of this document. In so doing we have, as required by the Code, reached our own conclusions; we have considered the matters contained in the objections, but have not restricted ourselves only to those matters. We have taken due account of the conclusions of other investigations and actions, but without regarding ourselves as being bound by them.

5. In this statement direct quotations are set out in italics. References to the masculine such as 'he' or 'his' should be regarded as including the feminine where appropriate. A supporting bundle of documents has previously been circulated to all interested parties – the objectors, those members or officers of the Council who played a significant role in the transaction, the council itself and where relevant their legal representatives. The bundle contains copies only of those documents to which the statement refers directly. Other documentation that has been gathered during our enquiry, but which has not been referred to, has been made available for inspection by interested parties.

**Powers under the Act**

6. Section 17(1) to (3) of the 1998 Act provides that:-

(1) *Where*

- (a) *it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body, that an item of account is contrary to law, and*  
(b) *the item is not sanctioned by the Secretary of State*

*the auditor may apply to the court for a declaration that the item is contrary to law.*

- (2) *On an application under this section the court may make or refuse to make the declaration asked for, and where the court makes the declaration then, subject to subsection (3), it may also-*

- (a) *order that any person responsible for incurring or authorising any expenditure declared unlawful shall repay it in whole or in part to the body in question and, where two or more persons are found to be responsible, that they shall be jointly and severally liable to repay it as aforesaid;*  
(b) *if the expenditure declared unlawful exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of a local authority, order him to be disqualified for being a member of a local authority for a specific period; and*  
(c) *order rectification of the accounts.*

- (3) *The court shall not make an order under subsection 2(a) or (b) above if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law, and in any other case shall have regard to all the circumstances, including that person's means and ability to repay the expenditure or any part of it".*

7. Section 17 of the 1998 Act, as set out above, remains in full force and effect for the purposes of consideration of these objections, notwithstanding amendments made by section 90 of the Local Government Act 2000. The reasons for this view are set out in paragraphs 14 to 16 below.
8. The courts have taken a relatively narrow view of the circumstances in which they have regarded an item of account as "contrary to law" within the meaning of that phrase in section 17(1) (a) of the 1998 Act. For example it has been held to cover:
- a) expenditure or income which a local authority had no power to incur or receive or which was otherwise 'ultra vires' (Beecham v Metropolitan District Auditor (1976) 75 LGR 79)
- b) expenditure which was incurred or income which was received without authority (Beecham v Metropolitan District Auditor); or
- c) expenditure or income which was debited or credited to the wrong statutory fund or account (Stockdale v Haringey LBC (1990) 88 LGR 7; Wilkinson v Doncaster MBC (1985) 84 LGR 257).

9. In exercising section 17, neither an auditor nor the Courts are entitled to substitute their own view of what may be a desirable policy for that of a local authority. The Courts can only intervene, on the application of an auditor or otherwise, if in exercising discretion conferred on it by Parliament a local authority has acted unlawfully. This it may do, for example, by acting for an improper purpose, by misdirecting itself in law, by failing to take into account a matter it was bound to take into account, by taking into account a matter which it ought not to take into account, or if it reaches a conclusion that no local authority acting reasonably could have reached (see for example, *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) KB 223; *Giddens v Harlow District Auditor* (1972) 70 LGR 385).
10. Section 18 of the 1998 Act provides:
- “(1) Where it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body...*
- (a) that any person has failed to bring into account a sum which should have been brought into account and that the failure has not been sanctioned by the Secretary of State, or*
- (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person, the auditor shall certify that ... the amount of the loss or deficiency is due from that person.*
- (2) Subject to subsections (4) and (8), both the auditor and the body concerned..... may recover for the benefit of the body a sum or amount certified under this section as due; and if the sum or amount is certified to be due from two or more persons, they shall be jointly and severally liable for it”.*
11. It has been put to us that the two sub-sections are mutually exclusive, and that the auditor is not restricted to issuing a certificate only where wilful misconduct is proven. The argument is that all that is required is for a person to fail to bring into account a sum which should have been brought into account.
12. We are aware of two precedents with a bearing on the point. In *R v Roberts* 1901 1KB 117 it was held that an inspector of weights and measures who was personally under a statutory obligation to collect certain fees failed to do so despite having wrongly been instructed by the authority not to. In *Rex (O'Carroll) v King* it was however held that it would be a defence if an individual under such an obligation could demonstrate that it had been '*lost without negligence or default on his part.*' The relevance of these cases to the Council is the extent to which individuals were personally involved in collecting amounts arising from the disposal.
13. In our view sub-section 18 (1) (a) covers two specific situations. It would apply in a case where an individual had received a sum, but had failed to bring it into account. Secondly, we believe that it would also apply where as a result of his or her office an individual was under a specific obligation to collect and bring into account a particular amount but did not do so. However in this instance we do not consider that either of the cases cited above applies. It is not argued that any amount has been collected personally by the parties involved, and so the first situation is not relevant. Moreover, none of the individuals whose actions we have considered were under a personal obligation as a result of their office to collect and account for a sum arising from the disposal of the freehold. We do not consider that the sub-section should be more widely interpreted. We therefore believe as a matter of law it is not necessary for us to consider further ss 18 (1) (a), and our analysis below considers only ss 18 (1) (b).
14. The Local Government Act 2000 provides a mechanism for section 17 (1) (b) and section 18 to be disapplied and in due course revoked. Disapplication arose when an authority adopted the Code of Conduct required by Regulation 4 of the Local Authorities (Model Code of Conduct) (England) Order 2001, and these sections were formally omitted on 27 July 2002 under the provisions of section 90 of the Local Government Act 2000 and the Commencement No. 9 Order 2002. However we consider that section 18 was in force for the purposes of our audit of the Council's accounts for the year ended 31 March 2002.

15. The Local Government Act 2000 obliged all councils to adopt a code of conduct for members, before the expiry of a period of six months commencing on 5 November 2001. The Council adopted such a code in April 2002, which set out in general terms the standards expected of members; it followed the general guidance made available for all Councils, and covered in particular members' interests and how they should be declared.
16. We take the view, as a matter of law, that if there is a loss caused by wilful misconduct on the part of any person before the date on which such a code of conduct was adopted by the Council, the responsible external auditor should issue a certificate in respect of any such loss or deficiency caused. In accordance with this view, we are of the opinion that we should consider any objection put to us under section 18 of the 1998 Act, and we have accordingly done so.
17. Wilful misconduct means deliberately doing something which is wrong or wrongly omitting to do something, knowing it to be wrong or with reckless indifference as to whether it is wrong or not (Graham v Teesdale (1983) 81 LGR 117). This definition, which must be read so as to include wrongful omissions to act, was accepted by the House of Lords in Porter v Magill [2001] UKHL 67. Misconduct occasioned by imprudence, negligence, excess of zeal, misplaced enthusiasm, error or lack of judgement falls short of wilful misconduct.
18. We are mindful of the seriousness of a finding of wilful misconduct. Although a section 18 enquiry is not a criminal proceeding, proof to a high standard is required. Lord Nicholls in In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 said *'the standard of proof required...is the preponderance of probability, usually referred to as the balance of probability.'* He continued *'the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.'*
19. We consider how these principles should be applied to this objection in section 7 of our report, as part of our assessment of the case under s18 of the Act.
20. Section 8 of the 1998 Act provides that:

*"In auditing accounts required to be audited.....the auditor shall consider- (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public..."*
21. In considering whether to make such a report, we have asked ourselves whether it is in the public interest to do so, and in particular whether any matters have arisen that should be drawn to the attention of the public. We consider in section 8 of this report the merit of making clear to the public our views on the legality of the transaction, the conduct of those involved, the weaknesses in the Council's procedures and the extent of the remedial action we consider necessary.

# Section 2 - The Nature of the Objections

## Introduction

22. Notices of objection to the accounts of the Council for the year ended 31 March 2002 were lodged by three objectors. We did not accept the initial letters from Mr David Miller (the letters dated 5 November 2002 supplemented by letters dated 7 November 2002, 25 November 2002 and 27 December 2002 and Mr Andrew Markey (the letter dated 17 May 2004) as notices of objection as they were not in our view compliant with the requirements of audit legislation. The correspondence listed below sets out the notices of objections that we have accepted and which are considered in this document.
23. The notices of objection are:
- Mr David Miller's letters dated 24 September 2004, 20 June 2005 and 4 August 2005 (Documents 286, 301, 307)
  - Mr Andrew Markey's letters dated 15 September 2003, 22 September 2005, 7 October 2005, 26 October 2005 (Documents 269,308,310,314)
  - Mr Mike Dawson's letter dated 19 June 2005 (Document 299)
24. Earlier correspondence in respect of the objections was addressed to Simon Sharp, who was then the Engagement Partner for the audit of the Council on behalf of PricewaterhouseCoopers LLP. Peter Flamank took over responsibility as Engagement Partner for the audit in March 2005.

## Objection by Mr David Miller

25. Mr David Miller has written to us on a number of occasions since late 2002 about the disposal of the freehold of Underhill Stadium, sold by the Council to the Club for the sum of £10,000 together with the benefit of an overage deed (a mechanism whereby the Council would, in certain cases, share in profits arising from a subsequent disposal by the Club). In a letter of 5 November 2002, he explained that the sale was to a private company, Barnet Football Club Holdings Limited, which is wholly owned by Mr Tony Kleanthous, the Chairman of the Club. Mr Miller has contended that the Council had breached section 123 of the Local Government Act 1972 (LGA 1972) as it was undertaken '*without the necessary consent of the Secretary of State,...they did not seek or obtain the best price that could have been realised*'. Furthermore, the sale contract was so poorly drafted so as to cause the loss of potential future development rights.'
26. Mr David Miller's correspondence has provided us with some factual background, which we have incorporated into Section 3 of this document. His letter of 5 November 2002 (Document 249), although we have not formally accepted it as an objection, provides a summary of five areas of concern:
- The land had been leased to the Club in 1985 for a term of 99 years, and the lease



contained restrictive covenants limiting the use of the land. By disposing of the lease, the Council forfeited its rights to uphold those covenants, and the payment received does not adequately compensate it for the loss

- The Council should have taken into account (and by implication, he asserts it did not) the revised deposit draft of the Unitary Development Plan, which omitted the land from the green belt. He argues that the value of the land with the development rights would be in excess of £5 million
  - The Overage payment Deed of 27 March 2002 includes a cut off period of ten years from the date of the contract, after which all provisions of the Agreement cease to operate. Mr David Miller believes that this effectively means that the Council has '*absolutely no entitlement to future revenue after this period*'
  - The sale was conducted by officers under delegated powers, although they are restricted to dealing with transactions with a consideration under £100,000. As the future development value of the land was expressly written into the contract, they arguably exceeded their authority
  - The lease contained repairing obligations, which if no longer enforceable by the Council would have been of substantial value to the Club
27. Mr David Miller concludes his letter by contending that senior Cabinet members including Mr Alan Williams, the then Leader and Councillor Danish Chopra, the then Cabinet member for Resources were fully aware of the conditions of the sale and must be held liable for the loss. He also left open the possibility of certain officers also being held responsible.
28. The earliest letter from Mr David Miller that we accept constitutes a valid objection is that of 24 September 2004, in which he alleges that three Councillors were '*responsible for the losses*' while three officers are '*culpable for their failure to prevent a sale taking place on terms which they knew, or should have known, were illegal and not in the Council's best interests*'
29. We have subsequently received a number of further communications from Mr David Miller. Much of this has provided additional information, and we have incorporated the items we consider relevant into later sections of this document. His letter of 20 June 2005 can conveniently be summarised below, as it sets out his objection in more detail. We reproduce below the key factors.

### **Section 17**

30. Mr David Miller requests that we apply to the Court for:
- *A declaration that the sale of the land at Underhill was contrary to law and that the income was an unlawful receipt (section 17 (1) (a))*
  - *A declaration that the sale was not sanctioned by the Secretary of State as required under section 123 (2) of the Local Government Act 1972 (section 17 (1) (b))*
  - *An order under section 17 (2) (a) requiring all those persons responsible for the unlawful receipt to be held jointly and severally liable for the difference in the sale price and the true value of the land at the time of the sale*
  - *An order under section 17 (2) (b) that any Members involved in the sale who are judged to have acted unreasonably be disqualified from office*
  - *Rectification of the accounts, either by having the sale set aside or by requiring the purchaser to pay the true value of the land at the time of sale under section 17 (1) (b).*

31. In a supporting schedule Mr David Miller claims that:

a) The sale was illegal as:

- *It was in breach of section 123 of the LGA 1972*
- *There was no attempt by the Borough to advertise the sale of the freehold in order to obtain best consideration*
- *No attempt was made to obtain an independent valuation*
- *The in-house valuation was based on a false premise regarding the green belt status of the land*
- *Safeguards were not included in the sale contract as had previously been proposed*
- *The sale was negotiated on the basis that the land would be de-designated (as green belt land)*

b) There was a breach of the Constitution as:

- *The sale of assets over £100,000 was not permitted under delegated powers*
- *The sale of property with a lease in excess of 30 years was not permitted under delegated powers*
- *The sale was not reported to Members as required*
- *The sale should have been approved by Members as it breached the Council's stated policy on green belt land*
- *The sale should have been treated as a key decision and approved by Members*

c) The sale was politically motivated as:

- *The football club had threatened to move out of the Borough if their requirements were not satisfied*
- *The previous Administration were fearful of the political consequences if the club moved away and the London Borough of Barnet was blamed*
- *The previous Administration had wished Barnet Football Club Holdings Limited to keep 100% of the value of Underhill if a new stadium was built in the Borough*

32. Mr David Miller also notes the conclusions of an inquiry commissioned by the Borough referred to as the 'Land at Underhill' inquiry.

## Section 18

33. Mr David Miller requests us to certify that the amount of loss proven to have been caused by the wilful misconduct of any individual named below, as an amount due from that person:
- Mr Alan Williams – Leader
  - Councillor Danish Chopra – Cabinet Member for Resources
  - Councillor Anita Campbell – Mayor
  - Mr Leo Boland – Chief Executive
  - Mr Jeff Lustig – Borough Solicitor
  - Mr David Stephens – Chief Valuer
34. Mr David Miller provides us with a series of supporting schedules setting out more detailed allegations and commentaries against each individual. We consider these matters in Section 7 of this document.
35. Mr David Miller's letter of 4 August 2005 (Document 307) states that he contends that the loss for the purposes of the section 18 objection is an amount of up to £5,402,660.

## Objection by Mr Andrew Markey

36. Mr Andrew Markey first wrote to Simon Sharp setting out formal notice of his objection on 15 September 2003. He explained that he had concerns over matters relating to the Club, and referred to difficulty in obtaining information to which he believed he was entitled. He drew our attention to apparent inaccuracies in the accounts and he objected to the way the sale of the freehold of the club was handled. At that point he asked us to consider issuing a public interest report.
37. Whilst we do not consider that his letter dated 17 May 2004 (Document 308) is a formal notice of objection, it contends that the evidence suggested:
- Criminal intent to deceive and defraud
  - An illegal disposal of a substantial freehold
  - Deliberate price-fixing, at a fraction of what it should have been
  - A resulting loss of over £5 million suffered unnecessarily by the Council's tax-payers
  - A sale to a private, non-trading company with only one shareholder
  - Constitutional abuse
  - Democratic abuse
  - Collusion to cover-up, which seems to be continuing
  - A material failing in the internal control of the Council
  - Inaccurate and misleading disclosure in the accounts
38. Following further consideration Mr Andrew Markey formulated his objections to the accounts in the manner required by the Act. He confirmed on 13 October 2005 that he wished to object under sections 8, 17 and 18 of the 1998 Act.

### Section 17

39. Mr Andrew Markey stated on 26 October 2005 (Document 314) '*The item of account I object to, as I think it contrary to law, is the disposal by the London Borough of Barnet of their freehold interest in the land comprising the present site of Barnet Football Club, resulting in a potential loss of some £5.5 million.*'

### Section 18

40. Mr Andrew Markey wrote to us on 7 October 2005 in the following terms:

*'I think the amount of the loss suffered to be in the region of £5 million, based on the estimated potential value given by the Borough Valuer, Dave Stephens.*

*Under section 18 (1) (b) Audit Commission Act 1998, I request you certify that the amount of loss proven to have been caused by the wilful misconduct of any individual named below, be due from that person.*

- *Mr Alan Williams*
- *Cllr Danish Chopra*
- *Cllr Anita Campbell*
- *Mr Leo Boland*
- *Mr Jeff Lustig*
- *Mr David Stephens'*

### Section 8

41. Mr Andrew Markey states in an e-mail to us of 13 October 2005 that he wants to make an objection under section 8, section 17 and section 18. He notes that he feels his letter of 17 May 2004 can be used to support his case '*in all three objections.*'

### Subsequent representations

42. We have received representations from solicitors representing parties named in the section 18 objections that Mr Andrew Markey has not made a valid objection, as section 16 of the Act requires him to identify the relevant expenditure involved. Mr Andrew Markey, it is contended, has only identified a '*potential loss*'. (Document 378). We are not persuaded by that argument. In our view the uncertainty that does exist flows from the uncertain timing of any future receipts accruing to the Council. There is no doubt over the transaction that Mr Andrew Markey challenges. As a result, we believe it appropriate to consider the merit of the matters he raises.
43. It has also been put to us (Document 398) that s17 (2) of the Act refers to 'expenditure' that is declared unlawful. It is contended that a loss of income cannot properly be regarded as expenditure of the Council. We accept this point, and hence accept that an application to the Court under the provisions of s17 (2) will not be successful. We have taken due account of this matter in determining what action we should consider.
44. Solicitors acting for three of those named in the objection have made representations on the matters that should properly, in their view, be included in a report under s8 of the 1998 Act. They note (Document 378 page 11) that such a report '*should only refer to facts that (have) not previously been brought to the attention of the audited body or which are not already in the public domain and which ought to be brought to the attention of the public.*' They add '*where a report is justified, the emphasis should be on the steps that are necessary to bring about an improvement.*' Their conclusion is that '*any criticism by the Auditor of past performance in this case would therefore be gratuitous.*'

45. We have considered these views carefully. We consider that it is for the auditor to determine the circumstances in which a report is required, and the nature and contents of that report. We also take the view that careful analysis of the circumstances of each case is needed. We consider that the auditor's powers under section 8 of the 1998 Act are wider than indicated in the representations referred to in paragraph 43 and certainly wide enough to encompass all the matters we have considered in the course of determining the objections in question, in framing this decision and in issuing any accompanying report under section 8. We consider Mr Andrew Markey's objection meets the statutory requirements.

### **Objection by Mr Mike Dawson**

46. Mr Mike Dawson wrote to us on 19 June 2005 (Document 299) to make a formal objection to the accounts for the year ended 31 March 2002, *'in respect of the sum received by London Borough of Barnet for the sale of Barnet FC's ground at Underhill, under sections 16 and 17, Audit Commission Act 1998.'* He adds:

*'I am objecting because I contend that the sale of Underhill was made, and the sum for the sale received, without the correct authority, so was unlawful.'*

*'I am objecting because I contend that the sale of Underhill breached section 123 (2), Local Government act 1972, because the secretary of State's approval was not sought and best value was not obtained, so was unlawful'*

*'I am objecting because I contend that the sale was unconstitutional and therefore illegal, as various Government Acts define the basis of the Council's constitution. To break the constitution is therefore breaking the Act, so was unlawful'*

47. We regard this as an objection under section 16 of the 1998 Act that asks us to take action under s17 of that Act. In relation to other possible grounds of objection, Mr Mike Dawson wrote:

*'For the sake of formality I confirm that I am not accusing Officers or Members of financial corruption, but I contend that there is sufficient evidence to warrant further investigation by you.'*

*'I do not wish for a public interest report to be made about the subject of my objection.'*

48. We do not believe that Mr Mike Dawson wishes to object on any other grounds than section 17.

# Section 3 – Our Approach

## Background

49. In performing our work, we were conscious of the significant level of review to which the matters raised by the objectors have already been subject. In particular, we were aware of:
- The Land at Underhill inquiry, sometimes referred to as the Harbord enquiry, an independent review established by the Council under the chairmanship of Mr Richard Harbord. Its remit was to examine all matters it considered relevant to the sale of the Council's freehold interest in the Underhill Stadium, and it reported back during 2003
  - The action of the Council in the High Court, seeking to have the sale of the freehold set aside. This was rejected in February 2004
  - The subsequent appeal to the Court of Appeal, that was dismissed in July 2004
  - The further internal enquiry on behalf of the then Leader, Mr Victor Lyons. This investigation was led by Mr Brian Reynolds, the Council's Deputy Chief Executive. It reported in June 2004
50. During our own investigations we have considered the findings of each of these reviews and actions, and the significant evidence that they received. However, while we have taken account of these matters, we have been conscious of our responsibility to formulate our own conclusions on those matters that as external auditors of the Council we are required to address. We have not therefore regarded ourselves as bound by any earlier material conclusions.

## Timing

51. A significant period has elapsed since the events in question. In part that is due to the extent of the earlier reviews and actions; we considered it appropriate to await the outcome of the earlier reviews and actions before determining the extent of the audit action that was required. Further, although concern had been expressed informally by the objectors earlier in the process, it was not until September 2003 that the first properly formulated objection was received, while the last was not submitted until October 2005. The consequence was that although we were conscious of the desirability of a speedy resolution, it was not until early in 2005 that it was appropriate to perform any detailed investigation. The hearing of objections has been undertaken in the period from October 2005, to date. Even during that period, our review has inevitably been made more complex and therefore time-consuming by the involvement of three objectors and several firms of solicitors, necessitating a considerable volume of correspondence.

## Approach

52. As auditors we are mindful of the public money that has been expended on this matter and the need to fulfil the duties imposed by audit law on the appointed auditor. We decided to hear the objections by way of correspondence, since we considered that was likely to be the most efficient and effective approach. Representations from interested parties, such as those submitted by solicitors acting for those against whom section 18 objections have been made, have been invited and on receipt circulated to all of the interested parties. In a number of places in this conclusion and statement of reasons we make reference to the matters raised in such submissions and responses.
53. Formal interviews have been held with those most closely involved, in certain cases on more than one occasion. The purpose of those discussions was to ensure that the auditor had a full understanding of the events. We also wished to establish both what each individual did, and what he or she knew about what was happening at the time in question. The interviews also provided an opportunity to ask questions about the process. Transcripts of the principal interviews were taken, agreed with the individuals concerned and subsequently made available. In the case of interviews of those who played only a minor role, we have taken notes.
54. We have undertaken a comprehensive review of the key documents involved; a summary of the main items is given as Appendix 1. We also found it helpful to conduct a forensic review of some of the key computer records. This took the form of a review of electronically held data, to the extent that information was available, including for example the hard disks of the computer of the former Leader. The purpose of that examination was to establish whether we had a complete understanding of the events that took place, and to ensure that our views were properly balanced.
55. Our views have taken due account of the range of advice we have received. We have been supported by a firm of solicitors throughout our work, and we have taken Leading Counsel's opinion on a number of matters. Valuation advice has been obtained from a firm of Chartered Surveyors. We also found it helpful to consult the Audit Commission on matters of process.
56. As part of our process, on 9 November 2007 we issued to those directly involved a statement of our provisional views. This was intended only to convey the conclusions that we were provisionally minded to reach, and the reasons for those views. We indicated to all parties at the outset that we intended to deal with this matter by way of correspondence, but in order to ensure justice and fairness were best served we also gave an opportunity to all parties to make oral representations. We have now fully considered all representations on our provisional views, and have taken full account of them in drawing up our conclusions and statement of reasons. Appendix 1 sets out the main documents that we have relied upon.

# Section 4 - Chronology of Events

57. This section contains an overall chronology of the events that are relevant to the disposal. The Table below contains a brief description of what occurred and provides a cross reference to the key documentation. Section 5 provides further detail, focussing on the main issues.

<i>Date</i>	<i>Event and Related Documents</i>	<i>Document Reference</i>
20.8.86	99 year lease of the Underhill stadium granted to Barnet FC (the Club) by the London Borough of Barnet (the Council)	1
5.3.98	Press release by the Labour group, explaining that it is the policy of the Labour group to support the Club	3
18.9.98	Submission of a planning application to further develop a stadium at Cophall - Internal memorandum from the Director of Environment Services to the Chief Executive	4
25.9.98	Letter from Mr A. Kleanthous to the Chief Executive about the Cophall application	6
18.5.00	Proposal to develop a site at Claremont Road in alliance with Hendon FC - Letter to the Club from the Chief Executive, enclosing revised heads of Terms	31
8.6.00	Approach to the Council by the Club to assign the Underhill lease to a holding company, Italian Sports Design Limited - Internal memorandum from Mr David Stephens to Mr Jeff Lustig	32
9.6.00	Discussions within the Council about the suggested assignation	34
9.6.00	Letter from Mr David Stephens to Mr Jeff Lustig about the assignation	35
6.7.00	Discussions over the development of a larger ground on the existing Underhill site - Briefing note from Mr David Stephens to Ms Rita Dexter	39
21.9.00	Note of a Meeting between the Club, the Leader and officers on de-designation of the Underhill site from the green belt and alternative locations for the Club	53
25.9.00	Letter from BFC (Mr Tony Kleanthous) to Mr Alan Williams about de-regulation	54
8.10.00	Internal e-mail on the proposals, including s123 issues	57



<i>Date</i>	<i>Event and Related Documents</i>	<i>Document Reference</i>
17.10.00	Memo from Mr Andrew Barry-Purssell to Mr Alan Williams/Ms Rita Dexter setting out details of a further meeting	58
27.11.00	Discussions over the sale of the freehold interest in Underhill	63/64
1.01	Discussions over the enlargement of Underhill	
16.1.01	Note to Leader from the Head of Development, about a meeting with the Scouts and St. John's Ambulance to discuss their re-location	72
17.1.01	E-mail from Mr Alan Williams to Ms Rosemary Coates	73
7.2.01	Letter sent by Mr Alan Williams to Mr Graham Slyper at the Club on de-designating the Underhill site	75
16.2.01	Letter from Mr Graham Slyper to Mr Alan Williams expressing concern over lack of progress	76
21.2.01	Legal advice received	77/79
22.2.01	Briefing note from Mr Andrew Barry-Purssell before a meeting of the Strategic Directors Group to be held on 27.2.01	80, 82
28.2.01	Meeting between the Leader and the Club – no notes available	
6.3.01	Letter from Mr Graham Slyper to Mr Alan Williams explaining that the Club has decided to look elsewhere for a new ground	84
14.3.01	Letter from Mr Alan Williams to Mr Graham Slyper in which the Council expresses willingness to sell the freehold of Underhill	85
21.3.01	e-mail from Mr Graham Slyper to Mr David Stephens, requesting proposals	87
12.4.01	Meeting on the shape of the disposal. Club notes that it is still looking for an alternative location - Internal file note written by Mr David Stephens dated 16.04.01	92
30.5.01	Note prepared by Mr David Stephens on progress with the disposal, but with no financial detail	99
	E-mail from the Leader to Mr David Stephens	98
14.6.01	Further briefing note prepared by Mr David Stephens	108
14.6.01	Leader indicates his support for these latest proposals and includes an observation that the Club would want a 50:50 split	108
7.01	Report to Cabinet drafted and distributed	119, 120
2.7.01	E-mail from Kasum Shah to Mr David Stephens	122
4.7.01	Clearance by Cllr Chopra	118
16.7.01	Cabinet agenda does not have the report on it	341 App 27
23.7.01	Draft delegated powers report (DPR) prepared and	127

<i>Date</i>	<i>Event and Related Documents</i>	<i>Document Reference</i>
	circulated by David Stephens to Mr Jeff Lustig, Mr Jeremy Jaroszek and Mr Leo Boland	
	Consultation responses	126
30.7.01	Comments by Mr Jeff Lustig	135
Oct/Nov 01	Articles appear in the press concerning plans for a stadium at South Underhill	149
18.10.01	The Council is informed in a note from Mr Andrew Smith to Mr David Stephens that an application for planning permission has been submitted for land to the south of Underhill	145
25.10.01	Briefing note on details of application	146
26.10.01	DPR sent to Cllr Chopra for comment	147
4.11.01	Cllr Chopra gives agreement, subject to the Leader's views	237 App 31
Early 11.01	The Club enquires about the sale of the freehold in an E-mail from Ms Valerie Welch on behalf of Mr Graham Beattie to Mr Paul Chadwick	151
9.11.01	Club advised that the DPR passed to the Borough Solicitor to enable a start to be made on preparing documents	237 App 32
12.11.01	Letter by Club to Cllr Campbell thanking her for her assistance	152
13.11.01	DPR signed by Paul Chadwick	153
	DPR sent to the Principal Legal Assistant to prepare a contract	150
11.01.02	Draft contract sent to the Club for comment	174
27.2.02	Contracts for the sale of land	237 App 39
27.2.02	Planning and Environment committee meet and accept the South Underhill application, subject to various conditions	205
27.3.02	Overage Payment Deed signed	237 App 40, 21
5.02	Conservative party gains control of the Council	
9.02	Review of the background to the disposal undertaken for Mr Boland	237
	Harbord enquiry reports	
13.2.04	High Court judgement given (see paragraphs 136 to 138)	280
1.6.04	Brian Reynolds' enquiry reports its conclusions to Cabinet	
30.7.04	Court of Appeal gives its judgement (see paragraph 139)	284

# Section 5 – Background

## Introduction

58. This section of our conclusions provides factual material on the events under examination. It is intended to provide an indication of the intentions of those involved, thereby also casting light on what those individuals knew. It also focuses on other key issues that have subsequently caused concern. The following matters are addressed:
- Options for the site of the Club's new stadium
  - Negotiations for the sale of the freehold of Underhill
  - Valuation of the Council's freehold interest in the Underhill stadium
  - The Council's approval process, and the Delegated Powers Report (DPR)
  - Contractual issues
  - Developments after the sale
59. The text refers to a number of key documents, which are summarised in Appendix 1 and have been made available as explained in paragraph 5.

## Background to the Events

60. In August 1986 the Council granted the Club a 99 year lease on their Underhill Stadium, to take effect from 25 December 1985 (Document 1). The lease contained a number of significant restrictions including:
- The land and buildings shall be maintained in good repair
  - The land may only be used for playing association football or directly related purposes
  - In the event that the Club is wound up, or the lease is determined for any other reason, the land will revert to the ownership of the Council.
61. In 2002, the Club operated as a football business through a number of companies. Mr Tony Kleanthous and his wife held the majority of the shares in the Club until 26 February 2002 when their shares were transferred to Barnet Football Club Holdings Limited, the Company, which Mr Tony Kleanthous formed in April 2001 and of which he was the sole shareholder and director. In addition to the Association football business, the Club sought to demonstrate community support by providing facilities for local youth and ladies' football, however it was not a charity nor was it operated on a not for profit basis. Based on its published accounts, it was loss making and its going concern status depended upon the personal guarantees of Mr Tony Kleanthous (*Document 323, page 10*).

62. The Underhill stadium occupies an area of approximately 3.5 acres. The 99 year lease was on the basis of a fixed annual ground rent of £50, the Club having paid a lease premium of £35,000 on its commencement. The lease restricted the use of the stadium to the playing of Association Football and associated activities (*Document 1*)
63. Between 1998 and 2001 there had been a number of proposals put forward by both the Club and the Council concerning Underhill Stadium and a possible new ground for the Club. The proposals were stimulated initially by the need to improve football stadia generally and football stadium safety in particular as a consequence of the Taylor review. It was believed that if improvements were not made to the Underhill Stadium, the Club would be barred from the league as a result of the unsuitability of its ground. The Underhill stadium is not well suited for its purpose as it has insufficient capacity, insufficient stands, the pitch has a severe slope and it is generally run down. The stadium is surrounded on all but one side by housing and whilst it is in a metropolitan green belt area, this status has been subject to review by the Council from time to time.
64. The Labour administration's policy throughout the period 1994 to 2002 when they had effective control over the Borough was to support recreation generally and to support the Club. For example, on 25 January 2000, the Council resolved to support the Club as shown in the following extract (*Document 21*):

*"This Council affirms its full support for Barnet Football Club and states its commitment to work with the club to identify suitable and appropriate facilities within the Borough"*

65. This translated into taking steps to support the Club's wish to obtain a new stadium and to remain in Barnet. An example of the support given is contained in a press release from the Labour Group of the Council on 5 March 1998 (*Document 15*). The press release stated that the '*Barnet Labour Leader has pledged continued support of his Group to the Club over the redevelopment plans for Cophall Stadium*'. It goes on to state that only the Labour Party supported the Club's plans.
66. By 2001/02 the Council had no overall control, but there was a Labour administration supported by the Liberal Democrats.

#### **Options for the site of Barnet FC's new stadium**

67. It is relevant to have some understanding of the various developments that had been proposed in respect of new stadium for the Club in the period 1998 to 2002.

#### ***Cophall***

68. The first proposal that we have considered was for the development of an existing stadium at Cophall. The suggestion was for a mixed use stadium (i.e. to be used by the community and the Club) that would be partly funded by the Council and partially by the Club. A planning application for residential development at Underhill was made in September 1998 (*Document 4*). Council officers saw this application as premature and suggested to the Chief Executive that the way forward "*would be to try and negotiate an acceptable scheme that could be determined once a favourable decision on Cophall is reached*". The proposition for Cophall did not proceed due to opposition and the outcome of a public enquiry. It appears that the planning application for residential development was not pursued.

#### ***Claremont Road***

69. The next proposition concerned the development of a site at Claremont Road where the Hendon Football Club had a football field. The Council sought to forge an alliance between the Club and Hendon Football Club in May 2000 with a view to a new stadium being built at Claremont Road. It was hoped that the disposal of Underhill would provide £3m towards the development of an improved ground, although this figure was dependent on planning approval being given for residential development. These proposals did not progress as the parties, Hendon FC and the Club, could not reach an agreement.

70. While discussions about the Claremont Road proposals continued, on 6 June 2000 Mr David Stephens the Council's Chief Valuer was approached by the Club regarding the assignment of the lease of the Underhill stadium to a holding company, Italian Sports Design Limited. (*Document 298*). The Club said that by separating the ownership of the property assets from the Club, future stadium issues would not be subject to ratification by the Board of the Football League. Discussions took place with the Club about the proposal and the conditions that might be associated with it. The assignment was not progressed as the Club did not wish to accept the safeguards that the Council required in the assignment, which were intended to persuade the Club to continue to play at Underhill, or for the lease to be surrendered if it chose to move '*in or out of the Borough*' (*Document 39*).

#### ***Expansion on the Underhill site***

71. Mr Tony Kleanthous appears to have become frustrated by repeated disappointments. In discussions with Mr Andrew Barry-Purssell, Head of Development and Regeneration on about 9 June 2000 he is reported as saying (*Document 237 Appendix 4*) that there was little point in further discussions with the Council unless it came up with a site as other local authorities had done for their local football clubs. He stated that dealing with the Council meant lengthy (and expensive) negotiations and that the Council appeared to put commercial considerations first.
72. A meeting involving Mr Andrew Barry-Purssell and Mr Alan Williams on 7 July 2000 was held to discuss the Club (*Document 39*), and the options for its expansion that were then under consideration. It was decided that the Council should explore the feasibility of a larger ground being developed at Underhill. During the meeting the Council endeavoured to demonstrate that a possible solution to the Club's stadium problems would be to rebuild on the existing site; in Mr Stephens' words '*We keep offering this option to TK but he keeps refusing.*' The scheme would necessitate the use of a small parcel of Green Belt land immediately to the south of the existing stadium. This proposal was supported by Mr Alan Williams, who made public statements concerning this option. The Council prepared a plan showing a possible stadium layout (*Document 237 Appendix 5*) and this received widespread local press coverage at the time (*Document 237 Appendix 6*).
73. The Council is required to prepare and periodically update a Unitary Development Plan (UDP), showing the anticipated use of the land in its boundaries. The Underhill Stadium is on land designated as Green Belt within the adopted Plan. In line with the possible redevelopment of the existing site for a new stadium the Draft Deposit UDP included provision to de-designate from Green Belt status the area shown on Drawing. No. 22824 (*Document 237 Appendix 34*). This area includes Underhill Stadium, the St John's Ambulance and Scouts sites as well as part of the playing fields to the south of these sites.
74. The proposals did not win favour with the Club, who adopted the line that all possibilities of staying at Underhill had already been explored and there was no point investigating this latest idea when it might not happen.

#### ***The new site at South Underhill***

75. Some months later, in October 2001, articles appeared in the local press concerning plans for a 10,000 seat stadium at South Underhill. A planning application was subsequently received by the Council on 16 October 2001 (*Document 144*). The site concerned did not involve any of the land that was the subject of the freehold disposal that by then was well under way. The planning application was apparently a surprise to the constituency members; Councillor Anita Campbell informed us that they had been expecting a proposal to enlarge Underhill, and not a completely new stadium. (*Document 321, page 20*)

76. Councillor Coakley Webb emailed Mr Alan Williams on 4 October 2001, requesting a meeting to discuss developments. (*Document 143*). We know from statements made by Councillor Anita Campbell that she was disappointed Mr Alan Williams had not alerted her in advance about the development of a new stadium at South Underhill. (*Document 321, page 21*). A meeting was arranged and a paper written by Mr Alan Williams referring to the Club was taken to the Labour Group meeting on 22 November 2001. This paper states that '*The Barnet Football Club saga continues apace. Despite every best endeavour on the part of the Council, despite all the commitment we have displayed over the years and despite the support of the Group has given it seems that there are people who continue to seek to make mischief.*' 'I did receive..... a 57,000 signature petition in support of the Club's redevelopment plan'. Following the meeting Councillor Anita Campbell continued to have concerns and emailed Mr Alan Williams seeking a further meeting. (*Document 156*).
77. On 19 October 2001 Mr Andrew Smith, Principal Planner, wrote to Mr Alan Williams, Councillor Munroe Palmer, Councillor Beverley Pearce and Councillor Anita Campbell advising about the planning application and its details. This memorandum was also sent to various officers including Mr Stephens, the Chief Valuer. Mr Andrew Smith's note set out details of the planning application. He attached a briefing note which explained that the whole of the area for the planned development was located in the Metropolitan Green Belt. It added that if the planning application were allowed and the development of South Underhill proceeded, the Greater London Authority had indicated that the Green Belt status of Underhill and the St John's Ambulance and Scouts sites would need to be retained (*Document 144/313*).
78. The Planning committee considered the application at its meeting on 27 February 2002. Planning permission was granted subject to a number of conditions. Development was only achievable if the Council were willing to allow the Club sufficient title over the land for the stadium. Following the elections of May 2002 there was a change of political administration, and the Conservative party resolved not to make that land available.

#### **Negotiations for the Sale of the Freehold of Underhill**

79. The terms of a possible freehold transfer of the Underhill site were the subject of a discussion recorded in an e-mail dated 27 November 2000 between Mr David Stephens and Mr Jeff Lustig (Chief Solicitor). The e-mail details the requirement for the transfer to be at market value unless the approval of the Secretary of State was obtained, for which it says there was no supporting justification. Mr David Stephens notes '*it's hardly for the economic benefit of the Borough or similar.*' (*Document 237 Appendix 11*).
80. Mr Andrew Barry-Purssell wrote to Mr Alan Williams on 16 January 2001 to update him on the Club's discussions in the context of the enlarged Underhill proposition (*Document 237 Appendix 14*). He set out the key components of an agreement:
- a) Preparation by the Council of drawings incorporating the agreed requirements of the Scouts / St John's Ambulance (the tenants of land adjacent to the Club) sufficient to accompany a planning application for the Quinta / Grange site (these are alternative sites owned by the Council that may have been available), to which it was proposed they would relocate
  - b) On grant of planning permission, the Council would grant the Club a 99 year lease of the Quinta / Grange sites at a peppercorn rent, without a review
  - c) The Club would erect a new building on the Quinta site to the reasonable requirements of St John's Ambulance / Scouts
  - d) On completion of the new building, the Club would grant St John's Ambulance / Scouts each a new 99 year (less three days) lease at a peppercorn rental for their respective areas. They could also grant a further underlease to the intended users of the remaining facilities

- e) The Scouts / St John's Ambulance would then vacate their existing premises and surrender their respective leases to the Council
  - f) The Council would then convey the freehold of the St John's / Scouts premises, and the Underhill ground, to the Club
  - g) The Club would pay the reasonable legal fees incurred in the negotiation of the transfer and legal fees in respect of the new leases
81. Mr Andrew Barry-Purssell also advised Mr Alan Williams that the Council was under pressure from the Club for a formal response to plans for the construction of a new stadium on the Underhill site, to avoid falling foul of the League at the end of the 2000/2001 season (*Document 237 Appendix 14*). Mr Andrew Barry-Purssell further advised Mr Alan Williams that the Council should agree to the proposals in principle subject to discussion and agreement of the detail. He also referred to his view that a planning application for development (of what he described as Underhill East Stand) should be moved forward.
82. In an e-mailed response dated 17 January 2001 (Document 73), Mr Alan Williams said 'I have no objection in principle to the proposals though we will need to take a paper to Cabinet. I agree we should promote an early planning application.' He continued '*I am concerned about 2 things:*
- *The transfer of the freehold of the ground to the Club – can we protect the Council in some way so that they cannot simply sell the land, keep the cash and move away from the Borough. I know we have talked about this before.*
  - *The cash contribution to the Quinta Drive buildings – how much is this likely to be. Where will the money come from. It appears we get a double whammy – no capital receipt for Underhill and a cash obligation for Quinta. We need to identify a funding source and cap our exposure.'*
83. The Leader wrote to Mr Graham Slyper, a Director of the Club, on 7 February 2001 (*Document 75*), stating that the Council believed that the proposal for de-designating the Underhill site could be secured and the objections from the GLA set aside. The Club replied (*Document 237 Appendix 16*) on 16 February indicating that they found Mr Alan Williams', the Leader's, letter disappointing and inaccurate and complaining about the lack of progress on the matters discussed at the meeting on 21 September 2000. On 16 February 2001, the Club wrote to the Council to say they concluded that there had been no progress and they had no option but to look at other sites outside the Borough.
84. In response to the letter, Mr Alan Williams requested a full briefing from Mr Andrew Barry-Purssell and an urgent meeting with the Club (*Document 76*). It is evident that Mr Andrew Barry-Purssell requested advice from other officers. Document 77, dated 21 February 2001, indicates that he asked Mr Jeff Lustig for legal advice on the Council's powers to incur expenditure under the wellbeing powers contained in section 2 Local Government Act 2000 (the 2000 Act) relating to the relocation.
85. Mr Lustig replied to Andrew Barry-Purssell on 22 February 2001 (Document 79). He wrote: '*We did of course have a fairly extensive discussion yesterday on the section 2 of the Local Government Act aspects in relation to funding the relocations. Obviously the social and environmental benefits to which you have referred will need to be fully set out and analysed. However, in principle, this is probably the type of arrangement which previously caused difficulties in terms of LA powers, but now can be dealt with under section 2. The new power... does not permit a local authority to do something which is otherwise prohibited or limited by other legislation and cannot be used to raise money. Those constraints do not seem to apply here though. Exercise of the powers is subject to the principles of Best Value... There are still the old fiduciary duty and Wednesbury tests, but presumably the Council would not fund the relocation of the two organisations unless and until it is satisfied that there is a viable business plan in place to achieve the redevelopment of Underhill.'*

86. Mr Jeff Lustig concludes *'If we put the sort of restrictions on re use and development profits that you have mentioned wouldn't that best value have to be assessed on that basis and therefore not requiring of Secretary of State's consent under Section 123? The restrictions are not artificial, but imposed in order to achieve legitimate Council policy objectives.'*
87. Mr Andrew Barry-Purcell presented a paper to the Strategic Directors' Meeting on 27 February 2001 (*Document 80*). In his introductory paper he refers to Mr Alan Williams' request for a report to be put to the March 2001 Cabinet. He also asks the Strategic Directors for guidance on how to proceed. The Strategic Directors attending the meeting on the 27 February 2001 were Mr Leo Boland, (Chief Executive), Ms Rita Dexter, (Deputy Chief Executive), Mr Jeremy Jaroszek, (Director of Resources), Mr Brian Reynolds, (Director of Social Affairs), Mr Martyn Kempson (Director of Education and Children) and Ms Anne Lippitt, (Director of Environment). The document provided by way of background was a briefing note that Mr Barry-Purcell had prepared for Mr Alan Williams dated 22 February 2001. The notes of the meeting (*Document 82*) show that the Directors wanted further discussions and negotiations to take place as well as a further meeting with Mr Alan Williams to discuss the matters arising. There is also reference to Mr Alan Williams' meeting with the Club being rescheduled for 28 February 2001. No report was presented to Cabinet in March 2001 concerning the Club, although at the conclusion of the meeting of 27 February 2001 this had been the expectation.
88. We have no notes of the meeting between Mr Alan Williams and the Club on 28 February 2001. However, we have a copy of a letter from Mr Graham Slyper of the Club to Mr Alan Williams dated 6 March 2001 referring to the meeting (*Document 84*). The letter states amongst other things
- '...Thank you for calling the meeting with us on Wednesday...prior to our scheduled Board meeting on Thursday.....The main item on our agenda was the position of the club within the Borough...I must regretfully advise that after lengthy discussion extending throughout the afternoon and well into the evening it was the unanimous view of the Board that the current proposals from the Council are no more definite than those of the past, and in order to safeguard our position the Club has no alternative other than seek a suitable location for both our stadium and our academy outside of Barnet'.*
89. The Club also said that they would raise the issue of relocation outside Barnet with supporters.
90. We have been told by Mr Alan Williams that following the receipt of the letter of 6 March 2001 he did not seek to contact the Club by telephone and no conversations with the Club took place (*Document 322, page 59*). His next action was to write to the Club on 14 March 2001 (*Document 85*). The main issue raised in the letter was an indication that the Council was willing to sell the freehold of Underhill. Mr Alan Williams has advised us that when he wrote his letter he did not know whether the disposal of the freehold would be sufficient to persuade the Club to remain in Barnet. There is no record of any discussion between officers on that date or in the days previous to the issue of the letter concerning the agreement to sell the freehold. Mr Alan Williams' letter of 14 March 2001 did ask the Club to draw to supporters' attention that the Council was still seeking to find locations for a new stadium within Barnet.
91. In response, Mr Graham Slyper sent an e-mail to Mr David Stephens on 21 March 2001 (*Document 237 Appendix 17*) quoting from the Leader's letter:
- "The only issue I have to raise from your letter is the statement that there is reluctance on the part of the Council to sell the freehold of your existing site at Underhill to the Club. This is not the case and we have indicated quite clearly our willingness to take that forward."*
92. Mr Graham Slyper requested proposals for the freehold sale from Mr David Stephens.
93. Mr David Stephens subsequently wrote to Mr Tony Kleanthous on 3 April 2001 confirming he had instructions to enter into negotiations for the sale of the freehold of the Underhill Stadium and requesting a meeting with the Club. His letter indicated that any terms provisionally agreed would need to be reported to the appropriate committee for approval (*Document 237 Appendix 18*).



### Valuation of the Council's freehold interest

94. Mr David Stephens met Mr Graham Slyper on 12 April 2001. Mr David Stephen's file note, dated 16 April 2001 (*Document 237 Appendix 19*) makes reference to the Football League's restrictions on Clubs, preventing them from dealing with property assets without the League's approval. The note also sets out the Club's wish again to explore assignment of their lease to a holding company (*Document 237 Appendix 19*). On valuation, it says that '*we generally agreed a freehold value for the stadium subject to the existing lease of circa £10,000. This is subject to i) a covenant being imposed prohibiting the use of the land for anything other than the playing of Association football and associated activities; and ii) a claw-back provision which provides that if the stadium/ land is subsequently sold .. for any other purpose...then the Council will be entitled to the whole of the enhanced value...*'
95. Mr David Stephens prepared a briefing note on the progress of negotiations with Mr Graham Slyper on 30 May 2001 (*Document 237 Appendix 20*). This document outlined three possible freehold disposal options that officers had considered:
- a) Unrestricted disposal: £5.4m
  - b) Covenant restricting use to football: £1.3m (reflects the weakness of covenant over time)
  - c) As b, but with a supplementary receipt of up to £5.6m (index linked) if sold, whether freehold or leasehold, for purposes other than football.
96. This briefing note also makes reference to Draft Heads of Terms being received from Mr Graham Slyper. The note indicates that Mr Graham Slyper's proposals were designed to give the Club the lion's share of any development value. It also makes reference to a lease assignment (to what became Barnet Football Club Holdings Limited) which the Club was still requesting and refers to the terms that the Club was sent in June 2000 (*Document 34*). The Club had not accepted these terms.
97. A copy of the briefing note was sent to Mr Alan Williams. The covering e-mail indicated that the Club was reluctant to discuss actual figures, hoping that these would be agreed between the Club Chairman and Mr Alan Williams. (*Document 237 Appendix 21*). We have seen no evidence that such discussions took place. (*Document 322, 27 March 2006, page 62*)
98. In his e-mail response Mr Alan Williams advised:
- '...we are not going to allow the Club to sell the site and move away from Barnet with any receipts. We will only support a move to elsewhere in the Borough....the Mayor of London has now accepted the basis for de-designation from Green Belt but only on the grounds that the site will be used for a football stadium development....We do need to push the Club to accept they can get what they want on the site especially with the Mayor's general agreement we now have.'*
99. The Leader also said that he had written to the Club Chairman along these lines, inviting him to talk to the Council. (*Document 237 Appendix 21*).
100. Discussions continued with Mr Graham Slyper and Mr David Stephens prepared a further briefing note on 14 June 2001 (*Document 237 Appendix 22*). This note set out the following as the negotiated basic proposals:
- a) Freehold sale of stadium (excluding any adjoining land) for £10,000.
  - b) Club relocates to new permanent ground in Barnet: 100% development value to Club.
  - c) Club relocates outside Barnet or just leaves Underhill: development value split 60% Council: 40% Club.

- d) Sale is to holding company (Barnet Football Club Holdings Ltd).

Mr David Stephens indicated that Mr Tony Kleanthous wanted the matter reported to Cabinet in July.

101. A copy of this briefing note was sent to Mr Alan Williams. The Leader indicated his agreement to the proposals in the briefing note and in a hand written observation suggested that Mr Tony Kleanthous would want a 50%:50% split (*Document 237 Appendix 23*). Referring to this document, during his interview Mr Alan Williams advised us that he was indicating that Mr Tony Kleanthous was looking for a different percentage and that he (Mr Alan Williams) was not asking Mr David Stephens to alter his approach. (*Document 322, page 46*)

### **The Council's Approval process and the Delegated Powers Report**

102. Mr David Stephens drafted a report to Cabinet in the name of the Cabinet Member for Resources, Councillor Danish Chopra (*Document 237 Appendix 24*). This report was sent to Councillor Chopra for clearance on 2 July 2001. He confirmed his agreement on 4 July 2001 subject to the endorsement of Mr Alan Williams, the Leader (*Document 237 Appendix 25*).
103. The agreed report was sent by Mr David Stephens to Mr Alan Williams on 5 July 2001 and was copied to a number of senior officers. In his covering e-mail, Mr David Stephens asked Mr Alan Williams whether the report should go to Cabinet on 16 July 2001 or be held over to the October meeting (*Document 237 Appendix 26*). There is no record of a reply to Mr David Stephens' e-mail and the report did not find its way onto the agenda for the July Cabinet. Mr Jerry Herring (Committee Section) spoke to the Club Chairman on 16 July advising Mr Tony Kleanthous that the matter was not on the Cabinet agenda. He then e-mailed Mr David Stephens to ask him to phone the Club Chairman to explain why (*Document 237 Appendix 27*).
104. It should be noted that the July 2001 Cabinet meeting was the first to be undertaken under the new constitutional arrangements determined by the Local Government Act 2000. In practice, Barnet had been operating a shadow cabinet system for some time, but from July 2001 the new arrangements had statutory effect. We were advised by Mr Jeff Lustig that there was a heavy agenda for that meeting. (*Document 320, page 12*)

### **Delegated Powers Report**

105. The Council had in place a scheme under which less significant decisions might be taken by officers without referral to a committee. The use of such powers was subject to the requirement that a 'Delegated Powers report' or DPR should first be completed. Approval was structured in different ways depending on the purposes of the DPR. For the purposes of the disposal of land, approval was by the Acting Head of Development and Regeneration in conjunction with the executive member of resources. The scheme also required that the DPR should subsequently be publicised.
106. It has not been determined who took the decision for the report not to go to Cabinet and the consequential adoption of the DPR approach. None of the members or officers interviewed accepted responsibility for this. Mr David Stephens prepared a Draft DPR in July 2001 which involved consultation with Councillor Danish Chopra, the Cabinet Member for Resources (*Document 237 Appendix 28*). Mr David Stephens circulated the draft document by e-mail on 23 July 2001 for comment to three senior officers, Mr Leo Boland (Chief Executive), Mr Jeff Lustig (Monitoring Officer and Borough Solicitor) and Mr Jeremy Jaroszek (Strategic Director) (*Document 237 Appendix 29*).

107. Mr Leo Boland received the same e-mail from Mr David Stephens at 17.54 on 23 July 2001 and he responded at 18.01 on the same day with the words 'I am happy with it'. Mr Clive Medlam the Borough Treasurer saw the e-mail in the first week of August 2001. Mr Clive Medlam informs us that he passed the draft Delegated Powers Report to his assistant, Mr Peter Willetts to review, and that he discussed the response with Mr Peter Willetts prior to its release to Mr David Stephens. The comments raised by Mr Peter Willetts were of a minor nature (*Document 319, pages 32/33*) When Mr Jeff Jeff Lustig responded on 30 August 2001 (*Document 135*) he made a number of comments:

*'I understand the thrust of the proposed on-sale provisions, but I think we need to be careful not to over complicate them because we might miss a trick that way. Are these not the key provisions:*

*Barnet FC is allowed to play at Underhill for at least 10 years unless it finds and moves to another facility during this period*

*Unless Barnet FC has relocated to another suitable ground within the Borough and the holding company or its successor in title has provided and developed or will provide and develop that other ground, then on any sale of Underhill the sale proceeds division provisions will apply.*

*We particularly have to be careful to ensure that, under the agreement, the holding company can't avoid the sharing arrangement by effectively transferring the development value before Barnet FC relocated out of the Borough.'*

108. We have found no acknowledgement from Mr David Stephens of any of these responses.

#### **Approval of the DPR**

109. Mr David Stephens wrote to Councillor Danish Chopra on 26 October 2001 enclosing a copy of the DPR for his comments (*Document 237 Appendix 30*). Councillor Danish Chopra replied confirming his agreement on 4 November 2001, subject to the agreement of Mr Alan Williams (*Document 237 Appendix 31*). In his interview we asked Mr Alan Williams whether he recalled being asked by Mr David Stephens if he was content with the Delegated Powers Report at that time. We were told that he did not. Mr Alan Williams confirmed that his method of dealing with Mr David Stephens was in writing and not orally. (*Document 322*). We have found no record of any correspondence between Mr David Stephens and Mr Alan Williams confirming his continued agreement to the disposal at this point.
110. At the beginning of November 2001 Mr Graham Slyper of the Club rang Councillor Anita Campbell and enquired about the sale of the freehold, asking if she could make enquiries on behalf of the Club. Councillor Anita Campbell has explained that she then rang Mr David Stephens to ascertain what the position was. (*Document 321, page 20*) This may have prompted Mr David Stephens to action the DPR.
111. Mr David Stephens subsequently informed Mr Graham Slyper by email, on 9 November 2001, that the DPR had been passed to Mr Jeff Lustig (Borough Solicitor) so he might start preparing the required documents, and he asked for details of the Club's solicitors (*Document 237 Appendix 32*). This document was copied to Councillor Anita Campbell.
112. On 9 November 2001 Mr Graham Beattie, Acting Director of Community Development, spoke to Mr Alan Williams, who was under the impression that there was delay with the freehold sale of Underhill and wanted reassurance that the delay was not on the Council's side. He also wanted reassurance that following the sale, the Club would have no scope for any change of use without the stadium returning to the Council. As a result of this discussion, Mr David Stephens was asked to e-mail Mr Alan Williams with the latest position (*Document 237 Appendix 33*).

113. The Leader also advised Mr Graham Beattie that he wished to see the Club's planning application progressed at a steady pace, and that the Council should not leave itself open to claims of delay. Barnet Cricket Club, the occupant of the Underhill South site, was seen as a 'significant issue' and the Council needed to identify possible future options. The Cricket Club had written to Mr Alan Williams requesting a meeting which was in the process of being arranged (*Document 237 Appendix 33*).
114. On 12 November 2001 Mr Graham Slyper emailed Councillor Anita Campbell (*Document 152*) thanking her for her assistance in chasing the freehold sale as previously the matter had been 'overlooked' by officers.
115. The DPR (*Document 153*) was signed by Mr Paul Chadwick, the Acting Head of Development and Regeneration, on 13 November 2001. We have been informed by Mr Paul Chadwick that he had little involvement with Mr David Stephens prior to November 2001, that there had been few, if any, one to one briefings and that he had not seen the DPR before it was presented for signature. Mr Paul Chadwick in his evidence to the Harbord enquiry states that '*I suspect that I would have speed read the report, probably more than anything, looked at the conclusions, looked at the best price issues and signed it off on that broad basis*'. (*Document 237 Appendix 1*). The stated purpose of the report was to approve the freehold sale to a holding company subject to safeguards ensuring future use of the stadium by the Club, with the Council sharing any future development value. In his further interview with the auditor on 22 January 2007, Mr Paul Chadwick reiterated that there was '*potential for some development profit for the Council that wouldn't have been there in the terms of the original lease*.' (*Document 365 page 12*)

**Publication of the DPR**

116. According to the Constitution (*Document 141*), the disposal of interests in land with a consideration of less than £100,000 are delegated to the Head of Development and Regeneration in consultation with the Cabinet Member for Resources. Mr Jeff Lustig took the view that the sale of Underhill was not a 'key decision' within the meaning of Article 13 (*Document 228*) and therefore was not reserved to full Council. Mr Jeff Lustig also thought that it was not a decision which fell within any of the express constitutional reservations to Cabinet or Cabinet Resources. This was based upon a disposal value of £10,000 and not potential development value or any share that might accrue to the Council, depending upon whether, where and when the Club might relocate at some time in the future, and the future use of the Underhill site. We address these points further in section 6 of our report.
117. The Constitution delegates to the Head of Development and Regeneration, in conjunction with the Executive Member for Resources, the power to make decisions about leases of up to 30 years. The Borough Solicitor took the view that this was not relevant in this instance as the contract concerned the disposal of a freehold interest and not the disposal of a lease.
118. When the new delegated powers arrangements were set up in 1998 it was intended that all DPR decisions would be published via the Intranet. However, service areas experienced technical difficulties in using the Intranet, and despite attempts by the Regeneration Service to enter their DPRs they were not successfully published. The Regeneration Service then attempted to send reports to Hendon Town Hall so that they could be entered on the system at the centre but this proved impractical and they were asked to stop doing this. The Regeneration Service therefore reverted to maintaining paper file records of all DPR decisions at Barnet House. All the Valuer's DPR decisions since 1998 had been recorded in this fashion. The Constitution itself gives no guidance as to how decisions are to be made available to members as an alternative to the Intranet.

119. IT support for the Intranet was eventually withdrawn, pending the launch of a new internet system which formed part of new library arrangements, known as TROVE, but this was not operating in 2001. Mr Martin Hughes, Democratic Services Manager, wrote to all chief officers on 27 July 2001 (*Document 130*) setting out the need to publish DPRs as prescribed by the Constitution, the steps to be taken as TROVE was not working, and requesting colleagues to continue to produce DPRs in the normal way and forward draft reports to Ms Janet Rawlings in the Committee Services for corporate approval.
120. We have been informed by Mr Roy Goddard, Head of Democratic Services, (*Document 349, page 1*) that the DPR (Delegated Powers Report) in respect of the disposal of the freehold of Underhill was not passed to Democratic Services at any stage, either during its development or subsequently. Once the DPR decision had been made, a copy of the report should have been placed on the Valuer's DPR file at Barnet House along with other DPR decisions. The Constitution (Para. 6.10 of Part 3 (page 20)) (*Document 141*) requires non-key decisions taken by officers under delegated powers to be recorded and made available to members of the Council, either as individual or summary decisions published on the members Intranet or as a performance indicator reported to an Overview and Scrutiny Committee. This did not take place and therefore the DPR was not published in line with the requirements of the Constitution.
121. Mr Clive Medlam told us of his view that this failure in no way frustrated any call-in process for scrutiny as officer decisions made under delegated powers are not subject to that process. (*Document 319, page 45*). Had it been published as prescribed in the Constitution, members would have been alerted to the disposal and would have had the opportunity to ask questions about it. Mr Alan Williams told us that it would have been his view that the DPR should have been capable of being called in, and therefore the interpretation of the constitution taken by officers may not have been the view of members. (*Document 322, page 60*).

**DPR and valuation issues**

122. The basis for the valuation used in the DPR was set out in a file paper prepared by Mr David Stephens (*Document 237 Appendix 35*), which notes amongst other matters that
- a) The lease restricts the use of Underhill to the playing of Association Football and associated activities. There is an absolute prohibition against parting with possession or under-letting part or the whole.
  - b) If the land is now, or in the future, de-designated as Green Belt, it could alternatively be developed for residential purposes.
  - c) The current rental value of the stadium and supporters Club is circa £30,500 per annum.
  - d) The value of the land for residential development is £5,577,600.
123. The DPR specifically addresses the issue of future development value for the stadium site and how this would be shared. It will be noted that the DPR is based on the sale being made to the Company and not the Club. Various scenarios were considered and these can be distilled as follows:-

Scenario	Conditions	Sale Distribution	
		Holding Company	Council
Holding company builds new stadium in Borough, Barnet FC moves to permanent new home and Underhill sold.	Barnet FC must remain and play at new stadium for at least 10 years.	100%	Nil
Club permanently relocates to stadium outside	None (but 10 years might	40%	60%

the Borough and Underhill sold.	apply).		
Club leaves Underhill Stadium or a new stadium built within the Borough and Underhill sold.	Within 10 years.	40%	60%
Club ceases to exist and Underhill sold.	None.	40%	60%

124. The wording of the DPR is not completely clear regarding the above sale distribution. Para. 11.4 (4) of the DPR is intended to set out the circumstances in which the Holding company will receive 40%, rather than 100%, of any future development value. However, it appears to contain a typographical error, with a bracket shown in the wrong place. It states:

*"... or leaves Underhill Stadium (or a new stadium built at the Underhill location or elsewhere in the Borough) within 10 years or...*

but should have stated:

*"... or leaves Underhill Stadium (or a new stadium built at the Underhill location or elsewhere in the Borough within 10 years) or..."*

125. As a result, the DPR does not state clearly to which scenario the "within 10 years" limitation applies. It certainly applies to leaving Underhill or a new stadium built at Underhill or elsewhere in the Borough, but it appears also to apply to permanent relocation outside the Borough. Mr David Stephens has confirmed that the latter interpretation was not the intention of the Council. He states that the clause was intended solely to relate to the scenario of the Club relocating to a new stadium within Barnet within 10 years and says the closing bracket was erroneously located. This position is supported by Para 11.4 (3) which deals only with the Club being permitted to remain and play at a new stadium within the Borough and does not set down what would happen if this condition were not met.
126. The effect of this erroneously located closing bracket is apparently to allow the Club to retain 100% of disposal value if it leaves Underhill after 10 years, irrespective of where it subsequently goes. No such provision was intended. Any reference to 10 years was relevant only to the scenario whereby the Club relocated to an alternative stadium within the Borough. If it did this and remained there for at least 10 years then the Club's disposal share would be 100%. If the Club left the new Borough site within 10 years then the split would be 40% (BFC): 60% (LBB). This issue is only relevant if the Club manages to secure some form of non-football redevelopment of Underhill after March 2012. The future Green Belt status of the stadium site is clearly relevant in this regard.

### **Contractual matters**

127. A copy of the DPR was sent by Mr David Stephens to the Principal Legal Assistant with a request that he prepare the necessary contract. The Borough Solicitor's office determined that Mr Steven Strange would take responsibility for preparing the contractual documentation. Mr Jeff Lustig was not involved with that decision. (*Documents 150/161*). The freehold sale of the stadium was effected through the completion of a contract between the Council and the Company. The required contract documentation was prepared by Mr Steven Strange working to instructions from Mr David Stephens.
128. A draft contract was prepared which reflected the DPR, and despatched to the Club in December 2001. Liaison between the Council and the Club's solicitors then followed as the detailed wording was agreed and associated enquiries, requisitions and searches were completed. Contracts for the freehold sale were exchanged on 27 February 2002 and completion was achieved on 27 March 2002.

129. The documents were sealed in accordance with the Council's standing arrangements under the cover of the signatures of the Mayor, Councillor Anita Campbell, and the Borough Solicitor, Mr Jeff Lustig. Representations (Document 368) have been made that Councillor Anita Campbell as Mayor did not 'take part' in the decision to sell the freehold interest; rather, her role was to 'attest to the fixing of the Council's seal.'

#### **Planning issues**

130. On 27 February 2002 the Planning and Environment Committee met to decide various matters including the planning application in respect of South Underhill. The Committee decided that, subject to the application not being called in by the Secretary of State for Environment, Transport, and the Regions following referral to the Government Office for London and the GLA, a number of section 106 agreements under the Town and Country Planning Act 1990 and other conditions, development could go ahead. Councillor Anita Campbell, having previously been advised that she had a conflict of interest in this development, took no part in this meeting and her position was taken by Councillor Kanti Patel (*Document 205*). Opposition to the planning application was led by BRASS (Barnet Residents Against a Second Stadium).

#### **Financial issues**

131. The financial sums in respect of the sale amount and costs incurred were paid to the Council on the due dates (*Document 15*).
132. There was no involvement of internal audit in respect of any of the Club's transactions with the Council and no business case addressing the options for the development or disposal of Underhill was prepared.
133. The Council's financial accounts duly record the transaction. Those accounts were properly placed on deposit for public inspection, and they disclose the nature of the assets held for the year ended 31 March 2002, together with comparative figures for the previous year. They do contain a typographical error, so the column headings mistakenly refer to the position at 31 March 2000 and 2001, rather than as at 2001 and 2002. This error was corrected as part of the finalisation of the accounts.

#### **Developments after the sale**

134. There have been a number of developments, enquiries and court actions since March 2002 that are pertinent to the objections:
- a) The apparent typographical error in the DPR, as noted above, was identified in May or June 2002 by the Director of Environment
  - b) The opposition to the planned South Underhill Stadium became more vocal and that opposition was represented by a group called BRASS. This group occasioned public meetings and sought to stop the planning application for South Underhill and the Club relocating. During these meetings it became known that the freehold of the Underhill ground had been sold. (*Document 219*)
  - c) Council elections took place in May 2002 and the Labour administration lost control to a Conservative administration that was not minded to support the relocation of the Club. The new administration instigated enquiries into the sale of the Underhill freehold. Mr Alan Williams stood down as Leader and was obliged to vacate his office. Mr Alan Williams has advised us that he arranged for all the official papers in his office to be shredded following advice he received from the Chief Executive's office that this was normal for those in his position (*Document 322, page 22*).
  - d) Mr Leo Boland arranged for the background to the freehold disposal to be documented and a confidential paper was compiled by officers in September 2002. (*Document 237*).

**Harbord inquiry**

135. Owing to the level of concern amongst members and in the press, the Council decided to arrange, via an Ad Hoc Scrutiny Committee, for an independent review. The Panel was chaired by Mr Richard Harbord, formerly Managing Director of the London Borough of Hammersmith and Fulham, and before that Chief Executive of the London Borough of Richmond, and had two other members, Mr Peter Waddington, a chartered surveyor, and Mr Samuel Jones, former Town Clerk of the City of London. The inquiry received cooperation from officers, former officers and councillors. However, the Club did not help with the inquiry and did not provide any evidence. The Panel's remit was to inquire into all relevant matters relating to the sale of the freehold interest of the Underhill Stadium. The Panel's unanimous conclusions are set out in section 5 of the report, (*Document 341*) and are summarised below:

- a) During the relevant period many senior officer changes took place and disruption occurred in communication and knowledge.
- b) Issues concerning to the Club or Underhill were not handled as a project with a supporting project team
- c) There was a lack of clarity about the Council's aims and what they hoped to achieve
- d) There was no evidence of malpractice, however, the Council's dealing with the Club since June 2000 was characterised by confusion as to motives
- e) There was no attempt to let the public know what the Council's position was regarding the sale of land
- f) There was no reason why the report relating to the sale of Underhill could not have been submitted to the July 2001 Cabinet meeting
- g) The decision to sell the freehold should have been taken by Members and not an officer DPR
- h) It was amazing that no one questioned the delay between the DPR being raised in July 2001 and not approved until November 2001 and that the files are strangely silent on the delay
- i) The three statutory officers involved with signing off the DPR did not engage effectively with the issues involved.
- j) The DPR did not adequately deal with the potential release of speculative development value
- k) Mr Alan Williams and Councillor Chopra relied on the comments and advice of the Head of Paid Service and Monitoring Officer in respect of the DPR. The Panel accepted that this was a reasonable position for them to take.
- l) Throughout the process, Mr Alan Williams made it plain that the Council should protect itself should the Club leave the Borough with the land reverting back to the Council. The Leader was not told that this could be achieved if the land was sold to the club on the terms being negotiated.
- m) The Panel did not understand why the Council felt it necessary to sell the freehold to the Club.
- n) It is clear that in September 2001 members should have been informed about the sale of Underhill to a holding company and be asked if they wished to continue to go down this route.



- o) In the Panel's view the error in the DPR was typographical. In the light of the political sensitivities the officers should have been more diligent in ensuring key clauses were properly drafted and Mr David Stephens should have sought advice from the legal department.

### **High Court action**

136. The Council unsuccessfully sought rectification of the transfer and supplemental deed, but not of the agreement for sale in the High Court. It therefore addressed only a limited range of issues. The Council's argument was that the sale was not at the agreed terms and that the contract should be rectified. Effectively, it sought a declaration that the transfer was void as a consequence of section 123(2) LGA 1972. AG Bompas QC, sitting as Deputy Judge in the High Court, in turning down the Council's request made a number of comments in his judgement of 13 February 2004 (*Document 280*) that may be considered pertinent to this matter, although we are advised by Leading Counsel that these points should be regarded as observations rather than evidence:

#### *Paragraph 18*

*Barnet LB got a poor bargain, a fact known to Holdings (the Club). Barnet LB was 'in the position of a trustee in relation to the land which it holds on behalf of the community' ..... Barnet LB did not act in relation to the sale of the Underhill Ground with care and Holdings has taken advantage of that.*

#### *Paragraph 127*

*I also accept that none of the Contract, the Transfer and the Deed accurately set out the terms of the accord reached in July 2001. In particular I have no doubt that back in July 2001 the ten-year limit to the claw-back, and the ten year limit to the operation of the restrictive covenant, were not contemplated by any of Mr Stephens, Mr Slyper, Mr Kleanthous or Holdings as part of what was to be the terms of sale of the Underhill Stadium.*

137. In referring to the DPR, at paragraph 133 AG Bompas QC stated 'If, through error on Mr David Stephens' part, the document did not in fact communicate what Mr David Stephens intended that it should, that error does not alter what was understood and intended by Barnet, in contrast to Mr David Stephens.'
138. The Council's action failed in the light of section 123(2) of the Local Government Act 1972. This, amongst other things, had the effect of providing that transactions such as that in question would not be invalid because of a lack of ministerial consent.

### **Court of Appeal**

139. The Council took the case to the Court of Appeal, whose judgment was made on 30 July 2004. The Court of Appeal dismissed the appeal, on the basis that the transfer had been properly authorised by the Council and at the time of the execution of the transfer both parties had been fully aware of the terms to which they were agreeing. (*Document 284*).

### **Mr Brian Reynolds's review on behalf of Mr Victor Lyons, the then Leader**

140. The Council decided a further review was required to examine matters raised in the previous reviews and whilst it was in the name of Mr Victor Lyons, the then Leader, it was led by Brian Reynolds, Deputy Chief Executive. Its findings were reported to Cabinet on 1 June 2004. The conclusions of that review were, in summary:
- No firm conclusions could be drawn why the draft Cabinet report had not been tabled in July 2001.
  - The decision to use a DPR was acceptable in principle
  - The delay in dealing with the DPR could be attributed to low priority, pressure of work and lack of chasing by the Club

- The Council drifted into the disposal rather than making an objective decision
- Officers signing the report defended their position in the context of their responsibilities
- The DPR was generally low on detail and difficult to understand
- Mr David Stephens expressed concerns relating to the proposals to sell the freehold but these were ignored.
- If the sale had been effected on the terms originally envisaged the sale would have been for the best possible consideration
- Whilst there was a view that best value had been achieved, it is acknowledged that it would have been better to have sought the Secretary of State's dispensation for the disposal
- It judged that disposal on the open market was not viable in the situation before them owing to the adverse reaction it would have provoked from the Club
- Mr David Stephens was reported to have queried the sale to a Holding company but was overruled by 'somebody' but there were lapses in checking out the status of the Holding company
- A set of proposals have been compiled to avoid any further similar problems arising

***Disciplinary action***

141. The Council took disciplinary action against Mr David Stephens in respect of his non-compliance with Council's procedures relating to the DPR. Mr Stephens received an official warning.

# Section 6 – Our Conclusions on action under s17 Audit Commission Act 1998

## Introduction

142. In this section we set out our conclusions and the reasons for the actions that we propose to take, formulated on the evidence that is before us, under section 17 of the Audit Commission Act 1998. We noted earlier that we accept that s17 (2) a) and b) provides only that a court may grant an application by the auditor for certain remedies where expenditure is involved and that a loss of potential income does not constitute expenditure for these purposes. However we believe that it is important to establish whether the Council has acted lawfully, and to consider what other actions we should take.
143. Our approach has been to address four fundamental issues:
- Was the consideration obtained by the Council for the freehold of the Underhill site the best reasonably obtainable?
  - Was the decision one that a Council acting in a reasonable manner could have reached?
  - Was appropriate authority delegated to those who took the decision?
  - Was the transaction entered into the same as that which was authorised?
144. We then turn to the main issues raised by the objectors, to the extent we have not already addressed them, and consider each in turn. Our view is based upon this analysis.

### **Was the Consideration the best reasonably obtainable?**

#### *Relevant law*

145. The fundamental statutory provision on this issue is contained in section 123 of the Local Government Act 1972, which states in respect of the disposal of land by principal councils that:
- 1) *Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.*
  - 2) *Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.*
146. Whilst section 123(1) therefore confers wide powers on the Council for the disposing of its land section 123(2) limits these by effectively giving statutory force for these purposes to the Council's fiduciary duty. This is of course the Council's duty to act effectively as a trustee of public monies.

147. The courts have interpreted this provision in this light. For instance in *R v. Middlesborough Borough Council ex parte Frostree Limited* ( Unreported. High Court, 16 December 1988) Roch J noted the observations of Bingham LJ (as he then was) in *Tomkins and Leach v. Commission for the New Towns* ( Court of Appeal, 25 October 1988) concerning a provision similar to s123(2) in section 37(3) of the New Towns Act 1981 that the policy of that provision is to ensure that so far as reasonably possible, '*public assets are not sold at an undervalue save on the authority of the Secretary of State. The public interest underlying the policy is obvious*'.
148. Roch J consequently considered that the elements of consideration required to comply with section 123(2) must '*have a commercial or monetary value which is capable of being assessed by those expert in the valuation of land and does not include elements which do not have a commercial or monetary value for the vending council*'.
149. This 'trustee' approach was followed by Lightman J on 1 July 1999 in *R v. Pembrokeshire County Council, ex parte Coker* and another [1999] 4 All ER 1007 where the Court found that (on the facts of that case) the Council could not without obtaining the consent of the Secretary of State allow the perceived social value of job creation to be counted towards the monetary value it had to obtain for the disposal.
150. Again in *R (Lemon Land Ltd) v. Hackney London Borough Council* [2001] LGR 555 Lightman J said that: '*the requirement that the elements in the consideration should be capable of having a commercial or monetary value to the local authority reposes on the local authority the responsibilities of a trustee of its land and enables its stewardship to be effectively audited*'.
151. We therefore consider that to comply with s123(2) of the 1972 Act (in the absence of the consent of the Secretary of State) the consideration for the disposal of land must have a commercial or monetary value (or a value capable of being assessed by those expert in the valuation of land) and that social elements not having such value are to be disregarded.
152. We have also considered the precedents available from instances in which advice has not been accepted or proceeded on. We note *R. v. Darlington Borough Council, ex p. Indescon* (1990) 1 EGLR 278, where Kennedy J. held that in principle a court was only likely to find a breach of section 123 (2) if a council had (a) failed to take proper advice; or (b) failed to follow proper advice for reasons which cannot be justified; or (c) had followed advice which was so plainly erroneous that in accepting it the Council must have known that it was acting unreasonably.

### ***Analysis of the transaction***

153. We have found it helpful first to analyse the nature of the transaction. We perceive three distinct parts:
- The immediate payment of £10,000 by the Company to the Council
  - The imposition of a covenant restricting the use that could be made of the land
  - A mechanism for discharging the covenant that would secure for the Council a share of the open market value of the land with vacant possession, in certain circumstances
154. The consideration therefore has an element that is both immediate and of a fixed sum, and a further part that may or may not be received, and cannot at present be quantified. In assessing the value of the latter, it is relevant to consider both the likelihood of it arising, and the sum that might be involved.
155. The freehold interest was of value to the Company, and hence the Club, largely as it removed the restrictions imposed by the lease. Three such restrictions seem of particular relevance; that the site might only be used for playing association football, the repairing obligations and the rent due.

156. The question of value also turns on the issues facing the parties involved. The Club faced a pressing need to develop its ground further, either at its present location or on an alternative site, as the current ground arrangement would from 2004 not satisfy the requirements of the football authorities. Secondly, the potential for the site of the stadium to be de-regulated for planning purposes was relevant to its future value, particularly in an alternative use. Such alternative use was not permitted under the lease. Other factors for the Club included the repairing provisions of the existing lease, and the small annual rental. It thus had a considerable incentive to negotiate with the Council for the freehold.
157. We are of the view that a loss will have arisen if the value of the Council's interest at the date of disposal is considered to be greater than the value of what is received. It follows that we need to establish the worth of the grant of a freehold interest in the site to the Club, in the circumstances which then applied. Against that we will set the £10,000 plus the potential further sums due under the provisions for sharing development gains.

**Valuation advice**

158. We have considered the advice on valuation matters obtained after the event by the Council, and we have also taken further advice of our own from Savills, Quantity Surveyors.
159. Mr Eric Shapiro was appointed as an independent valuer by the Council in the autumn of 2002 to review the disposal. In his report to the Council, Mr Eric Shapiro expressed the view that £10,000 did not represent the open market value of the Council's freehold interest in the Underhill Ground. His view was that if offered in the open market, subject to and with the benefit of the lease, "*it would have achieved a price very significantly in excess of £10,000*". Mr Eric Shapiro reasoned as follows:

*"Purchasers in the market would have considered that redevelopment for residential purposes would be a realistic possibility if Barnet Football Club vacated the land. If this were to happen Barnet Football Club, or its Receiver or Liquidator (as appropriate), would then have joined with the freeholder with a view to selling for development at the best price achievable. The open market would currently appreciate that planning permission did not exist for residential purposes, that the site was zoned as Green Belt, and that Barnet Football Club would only seek to vacate if they could not redevelop on the site (with or without acquiring additional land) or if they could no longer function as a Football Club. Thus whilst buyers in the market would not have paid a price which reflected the residential development value they would have paid a price to reflect hope value".*

160. He went on to say that he thought the "minimum price" which would have been achieved if the Club were not in the market themselves would have been in the region of £100,000. This figure, he said, could not be established as the product of a valuation calculation, but was his estimate based on his knowledge of the market and perception of speculators operating in this market.
161. Mr Eric Shapiro's argument is convincing, regardless of whether his "minimum" figure of £100,000 is too high or not. At the end of 2001, we are of the opinion that it was likely that
- there was some prospect of development being allowed at some time in the future,
  - the Club was in the market for the freehold; and
  - the freehold interest could be an important lever.
162. In these circumstances, our view is that the sum of £10,000 could have been bettered if the freehold had been placed on the open market without any restriction, leaving aside the typographical error in the DPR.

163. However, when the freehold was disposed of, the Council sought to reserve for itself a right to share in any future development value. The Council did not establish whether the price achievable on the open market would have been greater than £10,000 had the freehold been disposed of by the terms provided for in the Contract - that is, a disposal subject to a possible claw-back of 60% of development gain (a) limited to ten years and (b) excluding certain cases where a gain was made within the ten years.
164. We have taken our own advice on valuation from Messrs Savills, quantity surveyors. We are informed that in their view a local authority valuer should have valued the property using the same principles as adopted by an independent / private valuer in the valuation of a private asset. Savills explain that the valuation should have been undertaken in accordance with the relevant RICS standards, which in 2001 were the Practice Statements, Guidance Notes and Appendices of the RICS Appraisal and Valuation Standards published in 1995, known as the Red Book
165. Savills also comment that in their view there are three potential valuation scenarios:
- The value of the property on the assumption that there were adequate and proper mechanisms to capture the added value
  - The transaction as it was contracted, with imperfect overage provisions
  - The value of the Council's interest on the assumptions that there would be no attempt at any further share of value
166. Against these bases, Savills speculate that the price that might have been achieved through an unrestricted sale – scenario 3 – would be £250,000, while on the basis of the restrictions actually imposed a bidder might have reduced his final offer to £100,000.
167. Messrs Savills also explain that the Club would be regarded as a 'special purchaser', defined by the RICS as someone with a particular reason for acquiring an interest in a property, because of special circumstances. They say that the RICS rules require that for determining market value a special purchaser should be ignored, as a sale to that party would involve a marriage value. Their report adds *'there are no rules (in valuation or in real life) regarding how marriage value should be apportioned, and it is impossible to predict how an individual will behave in response to any particular opportunity to purchase a property.'* (Document 373 page 3)
168. We note also that the High Court reached a view on the evidence then before it that the disposal proceeds did not amount to best consideration. It based its decision on the facts that the amount received was £10,000 plus any further sums that may be forthcoming if the Underhill site is redeveloped in the period to 27 February 2012 and the proceeds are not invested in a new football stadium. After 27 February 2012 any additional development profits will vest in the Holding company of the Football Club as will any sums arising before that date if they are invested in a new stadium built within Barnet.
169. Our conclusion based on this analysis is that the Council did not obtain best consideration from the disposal of its freehold interest in the Underhill stadium, and it did not obtain the sanction of the Secretary of State. The transaction is therefore contrary to s123 of the Local Government Act 1972.

**Was the decision one that a Council acting in a reasonable manner could have reached?**

170. In addressing this point we have asked ourselves what the Council was trying to achieve through this deal, the powers it believed it had available and whether its approach towards achieving those aims was reasonable.

171. The evidence indicates that the Council's principal intention was to encourage the Club to keep its main stadium in the Borough. We have seen a press release from 1998 (*Document 3*) that affirms that was the long-held policy of the Labour administration of the day, and this view was confirmed during our interviews with the Leader (*Document 322, page 24*). The Club had made repeated statements, some of them in public, that it would have to consider relocation options outside the Borough unless the Council cooperated with it, and we accept that this was seen by the Labour administration as undesirable.
172. We consider that in exercising its powers of disposal under s123 of the 1972 Act the Council must act reasonably and in good faith and upon lawful and relevant grounds of public interest. We accept that the Council's apparent overall intention that the Club should remain within the Borough may constitute a proper purpose, since it would lead to identifiable benefits to the Borough. The thinking behind the Council's approach is however much less clear. We have sought to understand in particular why the Council saw it necessary to sell the freehold interest at all. We have also asked how the 60:40 split in any future surplus was derived, regardless of how the legal contract was ultimately drawn up.
173. We also note that under the terms of the 1986 lease, title would revert to the Council if the Club were wound up, or ceased to exist, or if it ceased to occupy the land. The Council would of course also obtain a freehold interest at the end of the lease period. During the period in question the Club was in debt, and we understand that it was able to continue to trade only because of the financial support of Mr Tony Kleanthous. These circumstances mean that there was some advantage for the Club to explore how it might realise value from its leasehold interest, which in turn would have had an impact on the value of the Council's interest.
174. We have found little evidence to support a conclusion on the rationale for the Council's approach. The Club had pressed hard since at least November 2000 for a freehold transfer. Mr Jeff Lustig is recorded as representing that any such transfer would have to be at market value, but there is no evidence that he or any other Council representative considered why the transfer was in the best interests of the Council. During our interview with Mr Alan Williams (*Document 322, page 36*), he made it clear that he was concerned the Club should not obtain '*huge windfall benefits*', and that '*the most we would support was a relocation elsewhere in the Borough, away from Underhill.*' Later, (*ibid page 41*), in response to a suggestion we put to him, Mr Alan Williams denies having been aware of or having discussed with the Club that it wished to acquire the freehold interest to enable it to raise further finance.
175. It is possible to speculate that the motivation might have been either directly to permit the Club to expand on that site, or as a means of transferring funding to the Club, but neither has been clearly articulated in any documentation we have seen, and those we have interviewed have not clarified the point.
176. The split of any potential surplus appears to have been derived in the course of negotiations between the Council and the Club. A briefing note of 30 May 2001 (*Document 99*) by Mr David Stephens provides an outline of discussions that were held between himself and Mr Graham Slyper of the Club on and after 12 April 2001. Mr Graham Slyper is recorded as feeling there should be an agreement as to how much of the proceeds of a sale should be retained by the Club if it sold Underhill for development. He also provided draft heads of terms which contain a number of the provisions ultimately found in the final agreement. However, no figures are shown for the respective proportions. Mr David Stephens comments '*this is intended to be the subject of discussions between Tony K and the Leader.*' The same note records his view that '*Graham Slyper has been pressing for the sale to the Club of the freehold interest in Underhill so that it can be used as collateral for a bank loan.*' He also comments that Mr Graham Slyper '*is also pushing for consent to assign the current lease to a holding company to avoid land trading restrictions to be imposed by the Football League.*'

177. We noted earlier that Mr Jeff Lustig had discussed with Mr Andrew Barry-Purssell, in the context of the further development of the Underhill site, the powers available to the Council under s2 Local Government Act 2000 – the 'well-being' powers. *Document 79* shows that Mr Jeff Lustig had some reservations, particularly:

- The powers are subject to the principles of Best Value
- The Council would have to '*put in place the sort of restrictions on re-use and development profits that you have mentioned*'

178. A note from Mr Jeff Lustig to a member of his staff, (*Document 77*), provides some further detail of the understanding of the available powers. He comments in relation to the potential grounds of the expenditure bringing social or environmental benefits, that '*on the social side there will be definite improvements for the two organisations who will get better facilities.*' He continues '*On the environmental side, the site, which is presently unattractive and untidy, will be physically improved and should bring an immediate improvement to the area in terms of appearance.*' Mr Jeff Lustig says that he has pointed these matters out to Mr Andrew Barry-Purssell, who in turn said there would have to be a detailed cost-benefit analysis. Further, Mr Jeff Lustig adds that '*this is probably something which we would want to discuss with the external auditors before the event.*'

179. We have considered whether the Council's approach was reasonable. There are two matters in particular that do not appear to us consistent with the intention to secure the Club's future in Barnet:

- The arrangements provide for the Company to receive 40% of the development value of the land if the Club moved outside the Borough within 10 years or if it ceased to exist. This provides an incentive which the original lease did not for the Club to cease playing at the Underhill stadium
- By transferring the Council's interest to the Company, rather than the Club, the Council made the Club's position more difficult than it was under the lease, since it gave the Company an incentive to realise for itself some part of the development value

180. In neither case have we received a clear justification for the Council's actions.

181. In considering the reasonableness of the decision we have sought to weigh the perceived advantages against the costs to the Council. We have not received any clear indication, either during our interviews with those involved, or from the relevant documentation of what the Council saw as the benefits of the sale. In particular, we have not been made aware of any cost-benefit analysis that was undertaken in line with Mr Jeff Lustig's note, nor any discussions with the external auditor.

182. Our conclusion is that the Council did not act reasonably in taking the decision to sell the freehold, given the rationale that has been put forward for this disposal. There is no evidence that there was any consideration of how the sale would contribute to the Council's articulated policy, and its apparent aims of assisting the Club. We accept that the transaction was one that the Council had the power to enter into, but in this case it failed to ask what purpose it served. Further, we have seen no analysis to demonstrate that it was consistent with the achievement of its statutory duty to achieve best consideration. We are concerned at the apparent absence of any debate or consideration of the benefit of foregoing further immediate receipts in return for possible future sums.

### **Was appropriate authority delegated to those who took the decision?**

183. The decision to dispose of the freehold of Underhill was taken through the Council's delegated powers report procedure. To establish whether this was appropriate we have considered the broader requirements of the Council's constitution, and then the specific circumstances in which a DPR is permissible.



184. The Council's Constitution, approved in October 2001 (*Document 356*) contains a section called 'Rules for the Disposal of Land and Real Property.' It notes that holdings of land are a corporate resource, and sets out the following provisions if it is decided that a property is no longer required:
- The Head of Development and Regeneration will consult all Chief Officers on possible alternative uses of the property (Rule 3)
  - The Head of Development and Regeneration will report to the relevant body on the disposal, including the uses to which the property might be put and the method of disposal (Rule 5)
185. We have seen no evidence that this happened and consequently our view is that these steps were not followed in this case.
186. The Constitution also establishes in section 3 the Responsibility for Executive functions (*Document 141*). It gives (at 6.5) to the Head of Development and Regeneration, in consultation with the Cabinet members (sic) for Resources the power to make decisions about:
- leases of not more than 30 years
  - licenses (sic) and easements
  - acquisition of land for under £5,000 and
  - disposal of interests in property for consideration not exceeding £100,000 plus proper fees
187. There does not appear to have been any consideration of whether this decision fell within the description of '*disposal of interests in property*.' The Delegated Powers Report was drafted by David Stephens in July 2001, in consultation with the relevant Cabinet member, Cllr Danish Chopra. Three senior officers then received it, Mr Leo Boland the Chief Executive, Mr Jeff Lustig as Monitoring Officer and Mr Jeremy Jaroszek, a Strategic Director. In October and November 2001 it was finalised, apparently agreed by the Leader and it was signed by Mr Paul Chadwick as Acting Head of Development and Regeneration on 13 November.
188. Article 13 of the Constitution provides that '*key decisions*' are reserved for the full Council.
- (i) A "*key decision*" means an executive decision which is likely:-
- (a) to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough.
189. The definition of a "key decision" for the purposes of a local authority's constitution is provided in statute by Regulation 8 of the Local Authorities (Executive Arrangements: Access to information) Regulations 2000. What seem to be the relevant elements are given below:
- An executive decision which is likely... to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Borough*
190. Mr Jeff Lustig was consulted on whether this decision constituted a key decision (*Document 228*). His conclusion was that it did not, although he describes this view as '*really just initial thoughts*', and it is apparent from the tone of his note that this was not a straightforward issue.
191. The failure of the Council to ensure that the DPR was publicised as required by the Constitution was noted earlier.

192. In our view the main areas of concern over the decision making process are first, whether it was appropriate to regard it as a disposal of an interest in property for a consideration not exceeding £100,000, and second whether this should have been regarded as a key decision, and thus been determined by the full Council.
193. We do not consider the immediate monetary value of the disposal was significant in relation to the Council's budget. However, in our view the issues involved in this case were of significance, within the meaning of Article 13 1 b) of the Constitution, particularly in terms of their impact on local communities. The use of delegated powers therefore seems inappropriate. However, in the context of a section 17 objection, we need to assess whether the use of the delegated powers report was capable of being a legally sound procedure. We consider that the decision was capable of being regarded either as a key decision or not, as the definition allows discretion on interpretation.
194. This means that the decision was capable of being dealt with under delegated powers and as such, the transaction (if properly constructed under the constitution) was not inevitably inappropriate. However, given the political sensitivity, the commitment to forego contingent assets and that the value of the consideration as a whole was higher than the stated £10,000 we take the view that matter should have been considered by members in Cabinet.
195. Our enquiries indicate that the Council considered the proper value to be included on the DPR, which itself sets out a number of relevant factors. However, there is no indication that the Council asked whether this might invalidate the use of the DPR process. For example, Mr Jeff Lustig's note to Mr Graham Beattie (*Document 228*) talks only of the initial payment of £10,000.
196. We have considered whether it was reasonable to regard this transaction as being the disposal of an interest in property, and have concluded that it was.
197. We would agree that there is no obvious method of taking account of a future value, although it would presumably require a view of the likelihood of events arising and of their impact. We have seen no evidence that any account was taken of future consideration.
198. In all the circumstances, although our own view is that it would have been more appropriate for the matter to have been determined by members, not least because of the greater transparency that would have resulted, sufficient discretion was available to the Council to allow us to conclude that those taking the decision to dispose of the freehold of Underhill had the authority to do so.

**Was the transaction entered into the same as that which was authorised?**

199. The disposal of the freehold was effected by means of an agreement dated 27 February 2002, together with a supplemental deed of the same date (*Document 237, Appendices 39 and 40*), which we have regarded as forming the transaction. The DPR imposes a number of conditions on this disposal, including:
- (3.1) The sale to a holding company of the Club is to be subject to safeguards for the Club having future use of the stadium and to the Council sharing in any future development value
  - (4.1) The matter is to be completed to the satisfaction of the Borough Solicitor
  - (11.4.1) The purchase price will be £10,000
  - (11.4.3) If the holding company at its own cost builds a new stadium facility within the Borough and the Club moves to that facility as its permanent ground, then the full value from any sale of the Underhill stadium shall be entirely for the benefit of the holding company, and the Club should be permitted to remain and play at the new facility for a period of 10 years
  - (11.4.4) Alternatively, if the Club permanently relocates to a stadium outside the borough or leaves Underhill stadium (or a new stadium built at the Underhill location or elsewhere in the borough) within 10 years, or ceases to exist, and the Underhill stadium is sold, the holding

company will be entitled to 40% of the net proceeds of sale in excess of the base value of the facility as a football stadium and at the time of disposal, with the Council being entitled to 60%

200. The ambiguity within the DPR at clause 11.4.4, over the sum due on the permanent relocation outside the Borough, has already been noted.
201. The Borough Solicitor's department used this report, we understand, to develop the legal documentation required. An Agreement for the sale of the land was entered into by the parties on 27 February 2002, together with a supplemental deed of 27 March 2002 dealing with the overage payment.
202. In comparing the provisions of the two deeds against the delegated powers report, a small number of differences are evident. The phrase 'permanently relocate' in 11.4.4 of the DPR is interpreted in the deeds as '*the Football Club playing its first team Association Football fixtures at a site or sites other than the property for a continuous period in excess of ten years or having the settled intention of doing so for the foreseeable future.*' The cut-off period after which the supplemental deed ceases to have effect is fixed at 10 years from the date of the deed. The introduction of the 10 year period appears to have been the principal issue to have emerged from the negotiations in the summer of 2001.
203. The main difference is in the event that triggers the payment of the further consideration. Both 11.4.3 and 11.4.4 of the DPR make it clear that the sums involved become payable on the sale of the stadium. However, the transaction as eventually completed involves a payment falling due only on a request from the Company that it be released from the covenant.
204. The other matter of substance is the consequence of the Club moving to a new stadium elsewhere in the borough. The supplemental deed is clear; at clause 2.2 it states  
  
'the purchaser will not be required to pay the further consideration in the event that the Football Club permanently relocate to a stadium built by the purchaser or a direct subsidiary company within the Borough boundaries of the London Borough of Barnet...'
205. Further provisions then deal with the facilities the new stadium must have, and that the clause will only be of effect if:  
  
'planning permission is granted in respect of the Property as an exception to Green Belt policy or the Green Belt designation in respect of the property is removed.'
206. By contrast, the DPR is ambiguous, although we have no reason to think it deliberately so. It is also silent on the implications of any change in Green Belt status.
207. Our view is that the ultimate agreement provides for payment at a point different from that set out in the DPR. Elsewhere, ambiguity in the wording of the delegated powers report resulted in a transaction that did not fully reflect what was intended. In all other respects we consider that the contract entered into was the one authorised.

## The objections

208. We have considered three objections that allege that the item of account in respect of the disposal of the freehold interest in the Underhill stadium was contrary to law and did not conform with the requirements of section 123 of the LGA 1972. Each of the objectors has asked that we take action under section 17 of the 1998 Act and apply to the Court for a ruling that the item of account is contrary to law.
209. The objections by Mr Mike Dawson, Mr David Miller and Mr Andrew Markey are not in identical terms but relate to the same transaction. Their principal arguments in support of the objections are summarised below.

### Summary of objectors' principal arguments

- a) *In order to comply with section 123 of the LGA 1972, the proceeds from the disposal of the freehold interest must represent best consideration. It is contended that they did not, although officers were well aware of the statutory requirements in respect of land disposals.*
- b) *Clause 7 of the Overage Payment Deed (Cut-Off Period) limiting the Council's right to a claw back payment to ten years was incompatible with the justification for the £10,000 'down payment'. To comply with section 123, there should have been no limitation in time.*
- c) *The sale contract failed to take into account the restrictive covenants of the original lease to BFC thereby depriving the Council of the value of its asset.*
- d) *There was no attempt by the Council to advertise the sale of the freehold in order to obtain best consideration*
- e) *Case law shows that speculative value should have been considered (Montlake and others v Lambert Smith Hampton Group Ltd - May 2004) (Francis v Barclays Bank plc - December 2004)*
- f) *The possible de-designation of the land from green belt which was actively being sought at the time was not properly taken into account*
- g) *There was no attempt by the Council to seek an independent valuation*
- h) *Adequate safeguards in respect of future development gain were not incorporated in the disposal agreement*
- i) *The sale was not capable of being dealt with by a delegated powers report as sale of assets over £100,000 not permitted under delegated powers*
- j) *Sale of property with a lease in excess of 30 years may not be approved under delegated powers:*
- k) *The sale was not reported to Members as required: action taken under delegated powers as "urgent" must be reported to Members within 48 hours; this did not happen; the failure was blamed on technical problems with the Council's intranet, but other methods existed for Members to be advised which were not used.*
- l) *The sale should have been approved by Members as it breached the Council's stated policy on green belt land.*
- m) *The sale should have been treated as a 'key' decision and approved by Members:*
- n) *The sale was politically motivated as BFC had threatened to move out of the Borough if their requirements were not satisfied*
- o) *The previous Administration was fearful of the political consequences if BFC moved away and they (the Council) were blamed:*
- p) *Deputy Chief Executive claims that the contractual agreement to allow BFCH to keep 100% of the Underhill value if a new stadium was built in the Borough was the expressed desire of the previous Administration. (e-mail dated 26th April 2004):*

- *Who requested this clause in the contract and why?*
- *Where was the political authority to allow it?*

*q) The conclusions of the Harbord Land at Underhill Inquiry (LAUI) conclusions support the view that the sale had been mismanaged, as it had concluded:*

*There had been “a major breach of the democratic process.”*

*If the decision had been taken by Members, it would have been subjected to scrutiny and the errors might have been noticed.*

*The three Statutory Officers, Leo Boland, Jeff Lustig and Clive Medlam did not effectively engage with the issues involved.*

*Leo Boland told the enquiry it had not seemed “a great issue to sell a lease to a long leaseholder”. (The sale was not to the leaseholder and even a cursory reading of the documentation would have revealed this.)*

*Leo Boland should have asked more questions than he did.*

*The Council should have sought dispensation from section 123 Local Government Act 1972.*

210. Many of these issues have of course already been addressed in the course of our own investigation. However, for completeness we express below our conclusions on each of the issues.

### **Consideration of the objection**

211. We have considered each of the principal arguments advanced by the objectors. In the following paragraphs we comment on each matter, using the summary that appears after paragraph 207.

*a) The sale did not comply with section 123*

212. We consider this point at paragraphs 145 to 169. In our opinion the Council did not obtain best consideration from the disposal of its freehold interest in the Underhill stadium, and it did not obtain the sanction of the Secretary of State. We agree that the transaction is therefore contrary to s123 of the Local Government Act 1972.

*b) The Overage Payment Deed is incompatible with the down payment of £10,000*

213. We do not accept that section 123 requires that there should be no limitation to the Council's right to a claw back payment. It is generally agreed that an error was made in the wording of the final contract that means it did not properly reflect what was intended

*c) The sale contracts failed to take into account the value of the restrictive covenants*

214. It is argued that the consideration for the sale failed to take into account the restrictive covenants in the 1986 lease. The original lease, amongst other matters, restricted the use of the Underhill site to the playing of association football and ancillary activities. This restriction effectively prevented the leaseholder from disposing of the site for development purposes even if the site were removed from green belt (other than with the consent of the freeholder). The objectors take the view that whilst this restriction applied, the value of the site was limited and the removal of the clause thus had significant value to the Club. The position is that once the freehold was sold, the lease vested in the Company and the covenants in the lease, whilst still in place, were unlikely to be used to prevent development taking place. Our view is that this should have been a factor in determining the best consideration that the Club would be prepared to pay. Whilst this is mentioned in the documentation concerning the negotiation it is not evident that it was given the attention it merited in the valuation process.

*d) The Council should have advertised the sale of the freehold*

215. The objectors suggest that the sale should have been advertised and independent advice on the valuation obtained. Based on our experience of local authority practice, we consider that generally land disposals should be advertised but that need not always be the case. In some instances where the marketability of a site is more difficult or where there is only likely to be one entity interested in the site, a negotiated sale to a single purchaser is not incompatible with the legal requirements. In the situation involving the Underhill sale, there is no evidence that any consideration was given to selling the freehold to any party other than the Club. The purpose of the sale was to assist the Club and, whilst the Council may argue otherwise, not to raise capital receipts.

216. It is uncertain whether the sale of the freehold would have attracted interest from any parties other than the Club although we believe that it might have. The presence of an active market in such assets is supported by the valuers' advice available to us. The special factors such as the lease covenants would suggest that the value of the freehold to the Club would be greater than to any other party who would have a freehold of a property with a sitting tenant with rights of occupation subject only to a modest rent extending for 86 years.

*e) Case law shows that speculative value should have been considered*

217. A further point put to us by Mr David Miller is that case law shows that the speculative value should have been considered in setting the amount of the consideration. It is also put to us that the possible de-designation (which was actively being sought at the time) was not properly taken into account. We accept that in considering the development potential, a number of future events including both de-designation and planning approval were relevant factors in determining best consideration. We believe that the Council was seeking to achieve this with the claw back provisions which, if achieved properly, had the potential to satisfy the legal requirements.

*f) The potential de-designation from green belt was not properly taken into account*

218. The DPR does explain that the Underhill site had green belt status and the claw back clauses had been designed to protect that the Council. If the DPR had not contained a typographical error then arguably the provisions in the sale would have protected the Council against an element of the financial loss. We have noted earlier our view that the Council did not clearly articulate the rationale for agreeing that the Company should retain a proportion of any development gain. We do not agree with the objectors that the valuation did take a false premise in respect of green belt status.

*g) There was no attempt to seek an independent valuation*

219. In the exceptional case that land sales are being negotiated with a single purchaser, it is our view that good practice would be for an independent valuer to be involved. We agree with the objectors that the Council departed from good practice in the way the sale was processed and negotiated.

*h) Adequate safeguards in respect of future development gain were not incorporated*

220. The Council's intention was that the overage provisions would provide some safeguards in this event, but it is generally accepted that a typographical error occurred and this led to financial loss.

*i) The sale was not capable of being dealt with by a delegated powers report as the assets involved had a value of in excess of £100,000*

221. We consider it is arguable whether the assets involved had a value of in excess of £100,000. However, in view of the political sensitivity of the matter, we consider that it should have been considered by the Council

*j) Sale of property with a lease in excess of 30 years may not be approved under delegated powers*

222. The objectors have drawn to our attention that under the Constitution the sale of property that is subject to a lease in excess of 30 years is not permitted under delegated powers. The Council's position is that the transaction concerned the sale of a freehold interest and therefore the restriction in the constitution relating to long leases did not apply. We do find that it is anomalous that this transaction involved the foregoing of a lease of over 30 years. It is not a matter that we need to address given the other conclusions we draw, but we are of the view that the ambiguity in the constitution should be addressed.

*k) The sale was not reported to Members as required within 48 hours*

223. We accept the views of officers that the primary reason for the failure to report the use of the DPR was the failure of the Council's intranet. While we agree that the DPR was not placed on the valuers' DPR file at Barnet House, we have received no representations that this limited members' opportunity to ask questions, and we note that decisions taken by officers using the DPR route were not subject to call-in.

*l) The sale should have been approved by Members as it breached the stated green belt policy*

224. We have not identified any formal requirement for the sale to be reported to Members on this ground alone. However, we believe it would have been good practice for it to have been so approved.

*m) The sale should have been treated as a key decision*

225. It is put to us that the sale should have been considered by members and not dealt with by a delegated powers report. We take the view that there is sufficient latitude in the Council's and the statutory definition of a 'key decision' to enable this question to be answered either way.

*n) The sale was politically motivated*

*o) The previous Administration was fearful of the political consequences if BFC moved away*

226. We have considered these two issues together. We take 'politically motivated' to mean that it was designed to secure political advantage as opposed to meeting the aims and objectives of the Council. We believe that the sale in part was intended to deflect the Club from pursuing its stated intent of looking to the possibility of moving out of the Borough. That might have attracted adverse publicity, suggesting that the Council was not helping the Club. We are aware from statements made to us by Mr Alan Williams and Councillor Anita Campbell that it was the adverse publicity that occasioned the consideration of Barnet Football Club matters by the Labour Group (*Documents 321 and 322*). The Council officers were aware that they needed to act in a manner that avoided criticism being aimed at the Council, in relation for example to unnecessary delay. (*Document 173*) In a period running up to elections in May 2002, it is our view that adverse publicity would have been perceived as politically damaging.

227. However, the evidence we have seen shows that it had been a long-standing element of Council policy to assist the Club in its aspirations to find a new ground. These attempts had extended over the previous 4/5 years and many officers had been involved. There was no secrecy over those efforts and the Labour administration's wish to support the Club was well known and evidenced. Mr Alan Williams informed us (*Document 322, page 24*) that this was part of the administration's wider policy of supporting recreation and the community. It is possible that the disruption caused by a number of officers leaving and starting during 2000/1 created confusion as to policy aims. For example, during 2000 disposal of the freehold of Underhill had been considered, but as part of a linked series of transactions and not as a stand alone transaction. However, the sale of the freehold was perceived by Mr Alan Williams and the officers involved as part of that continuum of discussions, even though it was not linked with any wider proposals. We do believe that it should have been considered in a wider context and we are concerned about the absence of any clear rationale in policy terms for the disposal. It is also unclear how the sale of the freehold would in any way have assisted the Council with any of its land management plans or other statutory functions. The emergence of the South Underhill planning application might have caused the sale of the freehold to be reconsidered. However those officers who might have questioned the wisdom of proceeding did not do so.

228. We consider, on the material before us, that a robust case can not be made that the sale was driven to secure inappropriate political advantage.

*p) Permitting BFCH to retain 100% of the Underhill value was the expressed desire of the previous Administration*

229. We have seen no evidence to support this assertion.

*q) The Harbord Inquiry's conclusions support the view that the sale had been mismanaged*

230. We concur with the views cited by the objectors

### **Conclusion**

231. We are of the view that the sale of the freehold of Underhill did breach the requirements of section 123 Local Government Act 1972 and it was occasioned by a number of procedural breaches, misjudgement and errors by a number of officers.

232. Based on the valuation information available to us, the entry in the financial accounts for the year ended 31 March 2002 in respect of the consideration for the sale of Underhill is contrary to law, on the basis that the £10,000 received together with the contingent further consideration does not meet the requirements of section 123 of the LGA 1972.

233. We have reservations as to whether it was appropriate to use a delegated powers report to authorise the disposal of the freehold interest. Even if this were a legitimate route, there were manifest flaws in the authorisation process, notably:

- The Borough Solicitor's concerns were not properly addressed;
- The Constitutional requirement for publication of the DPR were not put in place; and
- The errors in drafting create doubt as to whether the delegated powers report was properly approved.

234. We are also concerned at the apparent absence of debate about the benefits to the Council of disposing of the freehold interest in the Underhill stadium, and the granting of a proportion of any future development gain to the Company.



235. The consequent question for us is, having formed a view that the transaction was contrary to law, whether to apply to the Courts to seek a declaration that the item of account was unlawful, or whether to exercise discretion and not apply to the Courts. There are a number of factors we need to take into account:

- We are aware that significant amounts of public money have already been spent on investigating the sale and that a decision that causes even more public money to be spent should only be taken if there is good reason to do so
- We also recognise that the transaction has already been considered by the Courts albeit in the context of rectification rather than a section 17 action
- The Council has accepted that it acted in error, and has taken steps to rectify the situation and to identify procedural weaknesses
- Disciplinary action has been taken against one key officer
- Section 17(2) of the 1998 Act allows the Courts to order the persons responsible for any expenditure found to be contrary to law to repay it to the Council involved. However, in this case the item of account involved is income not received rather than expenditure, and we accept that there is a case that such income is not subject to that section. We also note that under s17 (3) the Court will not make an order *'if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law, and that it shall also have regard to all the circumstances, including that person's means and ability to repay the expenditure or any part of it'*

236. For these reasons, we find that the transaction, being the sale of the Underhill freehold, was contrary to law and did not comply with section 123 of the LGA 1972. However, we do not propose to apply to the Court for an order under section 17 of the 1998 Act for the reasons set out above.

# Section 7 – Our Conclusions on action under s18 Audit Commission Act 1998

237. The objectors have asked us to take action against six individuals under s18, alleging that their behaviour resulted in a loss to the Authority. We have also assessed whether we should consider the actions of anyone else, and have concluded that we should address the conduct of Mr Paul Chadwick, the Acting Head of Development and Regeneration.
238. Our analysis follows a similar pattern in each instance. First we set out the role of the individual, and their involvement in the sale. We then note the matters raised by the objectors, and any other points that have arisen in the course of our investigation. After that we consider each issue, and conclude with our formal determination and statement of reasons.
239. We have also considered some important ingredients of the proper role of members and officers of a local authority.
240. A member of a local authority is not free to act in his own interests. He occupies a position of trust. He is one of those individuals entrusted by Parliament and the electorate with making decisions, and with deploying resources contributed by others to their best effect, as the law and his view of the public interest require in the discharge of functions vested in the authority by enactment. As a person holding such a position of public trust, when taking or contributing to Authority decisions he has an obligation to act lawfully, carefully, reasonably and with a due regard to the interests of those required to fund the authority's activities. A person entrusted with the taking of decisions for a local authority is entitled to take into account the advice given by others but such a person cannot abdicate his or her responsibility or the duty of exercising his own personal judgment.
241. In a number of respects the duties of officers may differ from those of members. Except in those cases in which lawful arrangements have been made for an officer to discharge an authority's functions or he or she has specific statutory tasks to perform, their tasks and thus their responsibilities can often be quite different. Other considerations apart, officers are paid employees of the Council with a duty to give impartial and professional advice to the elected and other members who constitute their employing authority. Conversely authority members, whilst they have a duty to make or contribute to the decisions of their authority in the light of proper and relevant considerations, are often members of political groups, a situation which the law expressly recognises and respects. What the duties of an officer may be will depend on the position held and the terms and conditions of employment. In the case of an officer misconduct may amongst other things *"consist in the negligent or non-performance of routine duties, where no question of formal decision making arises."* (Robert Walker LJ in *Porter v Magill* [1999] LGR 375.
242. We have been particularly mindful of the test of 'wilful misconduct'. In paragraph 17 above, we noted the definition of wilful misconduct that has been agreed in leading cases, as

*'Deliberately doing something which is wrong, or wrongly omitting to do something, knowing it to be wrong or with reckless indifference as to whether it is wrong or not', but that*

*'Misconduct occasioned by imprudence, negligence, excess of zeal, misplaced enthusiasm, error or lack of judgement fall short of wilful misconduct'*

243. In considering whether there was wilful misconduct on the part of any party involved in the matter we have considered first whether there was any misconduct, and second whether, if there was, that misconduct was wilful. For these purposes we consider that misconduct may reasonably be regarded as conduct which falls significantly below the standard that could reasonably be expected of an officer in that position and under the particular circumstances.
244. We have noted that a certificate under s18 (1) (b) of the 1998 Act is to be given only where *'a loss has been incurred or deficiency caused by the wilful misconduct of any person.'* We therefore considered not only whether there had been wilful misconduct, but also whether it was a cause of a loss or deficiency. In so doing, we took the view in the light of advice that it would be sufficient to show that the misconduct in question was a cause, as distinct from being the only cause.
245. In assessing whether or not any individual has been responsible for a deficiency caused by wilful misconduct, we have used a three part test built on this approach:
- Has the Council suffered a loss in the relevant financial year as a result of the conduct of that individual? We describe this below as *'Did a loss result from that individual's activities?'*
  - If so, was that loss caused by an individual doing something wrong or failing to do something to an extent that their performance fell significantly below the standard that could reasonably be expected of an officer in that position and under the particular circumstances – *'Is there evidence of misconduct that caused the loss?'*
  - If so, did that individual know that his conduct was wrong, or was he recklessly indifferent as to whether or not it was wrong – *'Was the misconduct deliberate or the result of reckless indifference?'*
246. In reaching a view we have considered whether the individual deliberately did something wrong or wrongly omitted to do something, knowing it to be wrong or with reckless indifference as to whether it was wrong or not.

## **Councillor Anita Campbell**

247. Councillor Anita Campbell was the Council's Mayor during the year commencing May 2001, a member of the Planning Committee and she was a member for Arkley Ward in which the Underhill Stadium is located.

### **Councillor Campbell's role**

248. We see that Mrs Anita Campbell acted in three distinct capacities:

- As the Councillor for the Arkley ward it was her role to represent the views of the local community towards the planning applications at Underhill, and to the Club in general
- As a member of the Planning Committee, she would play a part in the determination of applications, taking due account of the advice proffered
- As Mayor, it fell to her to seal documents, thereby formally approving documents on behalf of the Borough

249. While no part of her own role, we also find it relevant that her husband acted as a steward at the Club.

### **Her actions**

250. Councillor Anita Campbell has made public her long term support for the Club. It is alleged that she and the Leader had discussions with the Mayor of London about the future use of the Underhill site during the summer of 2001, but she denies this. There is evidence that she was asked by the Club at the end of October 2001 to find out whether there was any reason why the sale of the freehold was not progressing. She informed us that she telephoned Mr David Stephens to establish the position, which may well have induced him to progress the delegated powers report. The Club was under the impression that her input had been influential as a director, Mr Graham Slyper, sent her a note of thanks on 12 November 2001. (*Document 152*)

251. Councillor Anita Campbell was also involved as a constituency councillor in discussions about the Club in Labour Group, and with Mr Alan Williams directly, about the planning application at South Underhill.

252. When the planning application for South Underhill arose, Councillor Anita Campbell declared her interest, and took no part in the debate.

253. As Mayor she signed the sale contracts as part of the Council's sealing process. Representations put to us stress that the role of the Mayor is to attest to the fixing of the Council's seal, and was not to take part in the decision to sell the freehold interest in Underhill. (*Document 368 page 6*)

### **Points raised by the Objectors**

254. We have considered two objections that allege Councillor Anita Campbell caused the Council losses as a consequence of wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. Their arguments in support of the objections are repeated below for completeness;

*a) Anita Campbell was Mayor at the time of the sale and also Ward Councillor for Underhill (then known as Arkley)*

*b) Anita Campbell had a declared interest in BFC and should not have taken part in any matters relating to the club*

*a) (sic) Anita Campbell claimed not to have known about the sale until she was required to sign the contract in her capacity as Mayor (e-mail to David Miller, 4 December 2002)*

*b) Evidence proves that Anita Campbell was involved in the transaction at least five months prior*

to sale (e-mails 29 & 30 October & 9 November 2001)

c) Borough Solicitor claimed that Anita Campbell's signing of the contract should be treated in the same way as the Queen's assent of a Parliamentary Bill (i.e. she had no choice) The Mayor does have the right to refuse to sign a document and, given Anita Campbell's declared interest, she should not have signed.

d) Anita Campbell and Alan Williams met with the Mayor of London in the autumn of 2001 to discuss the proposal for a second stadium at South Underhill. This proposal can be linked to the sale of Underhill because of the likelihood that BFCH would have needed to develop the land to pay for a new stadium.

e) In addition to her reported meeting with the Mayor of London, it is clear from e-mail evidence that Anita Campbell was involved in discussions with BFC and the Chief Valuer. She clearly knew that she should not have been involved.

f) Although the Borough Solicitor advised the objector that Anita Campbell's signing of the Overage Payment Deed was effectively ceremonial, it brought legal effect to the contract, which means that her declared interest was a relevant matter. Her Deputy Mayor could have signed in her place.

255. The objectors contend that Councillor Anita Campbell's actions meet the test of wilful misconduct because her involvement was not a simple lack of judgement. They believe she was aware of the rules of personal interest, and that she deliberately did something she knew she should not have done and then denied all knowledge of the sale.

### **Consideration**

256. We consider that there are three broad themes that we should address:

- Awareness of the sale - Councillor Anita Campbell had an awareness of the sale of the freehold and she was party to the intention to allow the Club to dispose of the Underhill site for residential purposes;
- Discussions with the Mayor of London - Councillor Anita Campbell had discussions with the Mayor of London concerning the planning application concerning the South Underhill Stadium planning application; and
- The Agreement for Sale and the Supplemental Deed - Councillor Anita Campbell signed these agreements when she had a conflict of interest in the transaction. The conflict of interest is her declared interest which we interpret as being her formal statements in support of the South Underhill development.

257. We have also received representations by the objectors, and further submissions from Councillor Anita Campbell relating to those views. The former expand on the view that it was not appropriate for Councillor Anita Campbell to sign the documentation on behalf of the Council, as Mayor, given her declared interest. The latter note that in signing or sealing documents in these circumstances she performed a purely ceremonial role. (*Document 368 page 6*)

258. In addition the objections concern issues relating to conflicts of interest. It is accepted practice throughout the public sector that members should adopt the highest standard of behaviour and should take decisions only in the light of relevant and proper considerations. In this instance Councillor Anita Campbell made public statements in support of the South Underhill stadium planning consent prior to any consideration by the Planning Committee. It has been put to us that she had an indirect pecuniary interest under the terms of section 94 of Local Government Act 1972 in the Club owing to her husband's employment.

### **Awareness of the sale**

259. The information before us demonstrates that Councillor Anita Campbell was aware of the proposed disposal of the freehold interest at the end of October 2001, as she was asked to intervene on behalf of the Club to chase officers who did not seem to be progressing the matter.

260. There is no evidence of any involvement prior to that time. In particular, we have seen nothing to indicate that she was aware of the detail of the disposal or had any involvement in its negotiation.

### ***Discussions with the Mayor of London***

261. Councillor Anita Campbell has indicated that she has met the Mayor of London once in a social setting. She represented that, at that meeting, she did not discuss the South Underhill planning application. (*Document 321, page 3*). There is no evidence to suggest that she sought to influence the Mayor's position in respect of the Underhill development.

### ***Signing the Agreements***

262. Councillor Anita Campbell signed the deeds relating to the disposal of the Underhill freehold interest in her capacity as Mayor. We accept the objectors' argument that it is inappropriate that a member should sign a deed in respect of a transaction where a conflict of interest exists, even as part of what is perceived to be a ceremonial procedure, which is what the sealing of deeds in the Council is judged to be by its officers.
263. However, we are also of the view that this is not a substantial matter in the context of the objections before us. Firstly, Councillor Anita Campbell's interest in the planning issue for South Underhill came about as a consequence of public statements in respect of the new stadium and therefore impaired her ability to sit on the Planning Committee and take an impartial view on the consent. She therefore removed herself from the Planning Committee when the matter was considered in February 2002. This is not the same as having a conflict of interest in respect of any transaction involving the Club. Second, Councillor Anita Campbell performed the signing alongside Mr Jeff Lustig, Borough Solicitor and the Council's monitoring officer, who was aware of the Council's support for the Club generally.

### ***Conflict of interest***

264. It has been brought to our attention that Councillor Anita Campbell's husband works for the Club as a match steward. Councillor Anita Campbell has confirmed this during interview. (*Document 321, page 30*). In our opinion this is a low level role that involves no contact with the Club's directors and / or decision making. It seems to us that it is doubtful whether this creates an indirect pecuniary interest as defined by local government legislation. In practice, we have not regarded this situation as significant. Councillor Anita Campbell acknowledged in her interview that she is a supporter of the Club and expressed support for the South Underhill stadium proposal and said she dis-barred herself from involvement in the planning discussions concerning this development as a consequence.

### ***Determination***

265. Applying our tests, we have concluded that no loss resulted from Councillor Anita Campbell's activities. We do not therefore propose to take any action against Councillor Anita Campbell under s18 Audit Commission Act 1998.

### ***Statement of Reasons***

*Did a loss arise from Councillor Anita Campbell's activities?*

266. The loss that arose to the Council did not result, at least directly, from the actions of Councillor Anita Campbell. We accept that in sealing the overage payment deed, she acted only in a formal capacity; had she not signed, we are in no doubt that her Deputy or another substitute would have done so.

*Is there evidence of misconduct that caused the loss?*

267. We have found no evidence of misconduct. We do not agree that Councillor Anita Campbell had a significant indirect pecuniary interest as a result of her husband's employment by the Club. We also believe that in dis-barring herself from involvement in the planning discussions relating to Underhill she acted properly.

*Was the misconduct deliberate or the result of reckless indifference?*

268. As we have found no evidence of misconduct, we do not need to consider whether her actions were deliberate or reckless.

*Recommendation*

269. We suggest that the procedures for sealing deeds should include a requirement for the Mayor or Deputy Mayor to distance themselves from signing any legal agreements where there is a possibility of this leading to a perception of conflict of interest.

## Councillor Danish Chopra

270. Councillor Danish Chopra was the Executive member for Resources at the time of the disposal, a role which included responsibility for land transactions

### Councillor Chopra's role

271. As Executive member for Resources, Councillor Danish Chopra's role was to direct the Council's overall strategy towards its use of the wide range of inputs required by a major Council. The Constitution (*Document 95*) describes his responsibility as being to 'lead on budget, policy formulation and implementation in relation to resources. In particular, finance, personnel and property budget.'(sic)

272. The Cabinet committee that he chaired discharged a set of functions that included:

- Capital and revenue finance, forecasting, monitoring, borrowing and taxation
- Grants and loans from all sources to voluntary organisations
- All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council

273. The Council's scheme for the delegation of certain decisions to officers required consultation with the Executive member. Councillor Danish Chopra, as the Executive Member for Resources, was the relevant person for the disposal of land that might be dealt with under this route

### His actions

274. Councillor Danish Chopra's involvement with the sale of Underhill freehold was wholly linked to his role as Executive Member for Resources. He was asked by Mr David Stephens to approve a draft cabinet report in July 2001 and he asked Mr David Stephens to brief him prior to the Cabinet meeting. In November 2001, his approval was required to the DPR and was given, although the DPR was formally signed by an officer. We are not aware of any other involvement.

### Points raised by the Objectors

275. We have considered two objections that allege Councillor Danish Chopra caused the Council losses as a consequence of wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. The arguments in favour of the objections are repeated below for completeness.

- a) Danish Chopra was the Cabinet Member for Resources who approved the Delegated Powers Report (DPR). That report allows for the buyer to keep 100% of the future value, – contrary to section 123 of the Local Government Act 1972*
- b) He approved the DPR on condition that "Alan" (Alan Williams) was happy with it.*
- c) Danish Chopra stated in an interview "Of course we looked at the detail of the sale. But I'm not a professional valuer or Solicitor." He is a tax inspector with, presumably, some experience of reading documents containing figures*
- d) Danish Chopra could not have failed to notice the "100%" option even if he did not notice the typographical error in the DPR.*

276. The objectors have also noted:

*Whilst evidence shows that Danish Chopra saw Alan Williams as the lead figure in the sale, the draft Report to Council (16 July 2001) was in his (Danish Chopra's) name. This report quite clearly sets out the circumstances in which BFC keeps 100% of the development value. This report had no erroneous brackets. Danish Chopra is a professional man who would have had no difficulty in understanding the document, and it is not credible to suggest that he did not realise this option would fail to comply with section 123 of the LGA 1972.*



*Danish Chopra was also aware that the Report should have gone to Cabinet, and when it re-appeared in the form of a Delegated Powers Report, he did not query the delay or reason for a change of approach. This cannot be described as negligence as he was too closely involved not to have known that there was a material change in circumstances.*

*On the basis that Danish Chopra must have known that neither the transaction as set out in his report nor the Delegated Powers Report could possibly comply with the requirements of section 123, I contend that his actions meet the test of wilful misconduct because **he deliberately did something (signed off the DPR) which he knew to be wrong.***

*It has been reported to the objectors by Cllr Kanti Patel, that Mr David Stephens has alleged that Danish Chopra put pressure on him with regard to the Delegated Powers Report. Cllr Patel has indicated that he is willing to make a statement to this effect and be interviewed by you.*

### **Consideration**

277. The issues can be broadly analysed into three components:

- Awareness of the sale – Was Councillor Danish Chopra aware that the sale of the freehold should be dealt with at Cabinet and not by use of a DPR?
- Pressure to progress – Did Councillor Danish Chopra pressure Mr David Stephens to progress the disposal by way of a DPR and not process the sale through Cabinet?
- The DPR – Should Councillor Danish Chopra, as a professional man, have identified that the DPR might have allowed the Borough to sell the freehold interest for less than best consideration, and to have identified the mistake in the DPR?

### **Awareness of the sale**

278. The Harbord Inquiry took the view that Councillor Danish Chopra was entitled to rely on officers when carrying out his responsibilities as an Executive Member. We agree that even an experienced Councillor will not have a full appreciation of the legislative, operational and financial arrangements appropriate to a complex organisation such as a local authority and might reasonably rely on the officers appointed by the Council. However, an Executive Member does have a responsibility to undertake his or her role with responsibility and with appropriate skill. The initial question for us is whether Councillor Danish Chopra fell short of the required standards in any respect.

279. It appears from our review of the documentation that Councillor Danish Chopra was acting in a reactive capacity throughout the period in which he had involvement. Following a request from Mr David Stephens to approve a draft Cabinet report, he was content for the sale of the Underhill freehold to be subject to a report to Cabinet in July 2001. There is no evidence to suggest that any action on the part of Councillor Danish Chopra caused the Cabinet report not to be tabled. When presented with the DPR, Councillor Danish Chopra could have insisted that the matter went to Cabinet. Whilst Councillor Danish Chopra could have taken this view, we are not persuaded that he was not entitled to rely on officer's representations that the decision could be progressed by way of a DPR. It is suggested that the Councillor should have known that the sale should have been progressed through Cabinet. We do not believe that the argument has substance as senior officers of the Council were content for a DPR to be used and we consider that he could rely on their interpretation of the Council's constitution.

### ***Pressure to progress***

280. The objectors state that Councillor Danish Chopra pressured Mr David Stephens to prepare the DPR instead of a Cabinet report. We have spoken to Mr David Stephens and he has not supported this view of events. In his supporting evidence for his objection Mr David Miller states, *"It has been reported to me by Cllr Kanti Patel, that Mr David Stephens has alleged that DC put pressure on him with regard to the Delegated Powers Report. Cllr Patel has indicated that he is willing to make a statement to this effect and be interviewed by you"*. However, Mr Kanti Patel informed us that he has no first hand knowledge of such events and was interpreting information provided to him by Mr David Stephens.
281. The Council's then constitution provided the Director of Regeneration with delegated powers to dispose of a property for a consideration of under £100,000. The power had to be undertaken in conjunction with the Executive Member for Resources. The Acting Director of Development and Regeneration at that time was Mr Paul Chadwick, who had the primary responsibility, and to whom David Stephens reported at this time. It is our view that there is insufficient evidence to be certain who decided to progress the disposal by way of DPR.

### ***The DPR***

282. When the draft DPR was presented to Councillor Danish Chopra he would have seen that the Head of Paid Service, the Monitoring Officer and the Borough Treasurer had all looked at the DPR and had apparently made no criticism of the planned sale. None of the officers had on the face of the DPR highlighted any errors in drafting or issues of legal or financial non-compliance.
283. We have considered what would be a reasonable expectation of the Executive Member of Resources. We understand that Councillor Danish Chopra has a relatively senior position in HM Revenue and Customs. In our opinion, it would be reasonable for him to read the document, focus on matters of key importance to the Council and raise any queries with the appropriate officer. Indeed, this is what he appears to have done. Councillor Danish Chopra might have raised more issues, but in all the circumstances it appears to us that he fulfilled his responsibilities.

### **Determination**

284. Applying our tests we have concluded that the loss that arose to the Council did not result from the actions of Councillor Danish Chopra. We do not therefore propose to take any action against Councillor Chopra under s18 Audit Commission Act 1998.

### **Statement of Reasons**

*Did a loss arise from Councillor Danish Chopra's activities?*

285. The loss that arose to the Council did not result, at least directly, from the actions of Councillor Danish Chopra. He did not play a fundamental role in the disposal.

*Is there evidence of misconduct that caused the loss?*

286. There is no evidence that Councillor Danish Chopra improperly intervened and caused a DPR to be used instead of a Cabinet report. There is no evidence to suggest that Councillor Danish Chopra put pressure on Mr David Stephens in connection with the sale. We consider that Councillor Danish Chopra fulfilled his responsibilities.

*Was the misconduct deliberate or the result of reckless indifference?*

287. As we have found no evidence of misconduct, we do not need to consider whether his actions were deliberate or reckless

## Mr Alan Williams

288. Mr Alan Williams became Leader of the Council following the local elections in May 1994, and remained in that position at the time of the disposal. He was elected to the Council in 1986 and remained a Councillor representing Burnt Oak Ward until he stood down in 2003.

### Mr Alan Williams' role

289. The Council's constitution ascribes no explicit responsibility to the post of Leader. It does however note that *'the Leader may carry out any of the functions delegated to the executive, cabinet committees, lead members or officers.'* In our view it is reasonable, given his role as the head of the Council's controlling group, to regard him as playing a primary part in the formulation of the Council's strategy and in monitoring its service delivery.

290. Other relevant responsibilities of the Leader include the chairmanship of the Cabinet, and the duty to publish a scheme of delegation each year.

### His actions

291. Mr Alan Williams was involved with the various attempts to find the Club a new ground. In each case, the documentation suggests that Mr Alan Williams was seeking to facilitate a solution. The owner of the Club, Mr Tony Kleanthous, was considered a difficult character to deal with; it has been reported to us that he had been known to berate officers when they did not act on matters as he thought they should and officers have explained to us that he was difficult to deal with and would not listen to them. For these reasons, Mr Alan Williams invited Mr Tony Kleanthous to deal directly with him and there is evidence of meetings between them throughout the period covered by this investigation. The relationship was business related and not one of friendship.

292. Mr Alan Williams has told us that the Club was important politically as it had the potential to create adverse publicity. He commented to us on the critical press reports:

*'the club would become a big issue. Quite rightly, members are then saying to its leadership, 'What the hell are we doing?' We've got a manifesto commitment to support clubs and organisations and so on. Barnet Football Club is, in Barnet's terms, an important sporting resource and sporting provision, and here's the Council, according to the newspapers and according to the Club, trying to drive it out of existence.'* Mr Alan Williams informed us that unlike his political opponents, the Labour Group has been continuously supportive of the Club. (Document 322, page 24)

293. He explained by way of background that the Council and its Labour-led administration had expressed its general support to a range of clubs and organisations within the Borough. The Labour party manifesto stressed that providing recreation and leisure, sporting and other facilities, and the support of those clubs that delivered those facilities, was as important to the Council as the provision of housing and social services, mending the roads and the footpaths.

### Points made by the Objectors

294. We have received two objections that allege Mr Alan Williams caused the Council losses as a consequence of his wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. The arguments in favour of objection put forward by the objectors are repeated below for completeness.

a) *Alan Williams was undoubtedly the key Member driving this sale of Underhill forward.*

b) *Barnet Football Club actually expected Alan Williams to negotiate terms directly with them (Minutes of meeting, January 2001) (The objectors explain that they do not know if this happened due to Alan Williams's files being shredded)*

c) *Alan Williams publicly stated that he wanted to de-designate the land to allow Barnet Football Club to sell the plot for development (Barnet Press, September 2000)*

d) *Alan Williams stated "In planning terms there is no reason why we need to take the site out of*

*the green belt in order to develop Underhill. But it is a nonsense that it is in the green belt-the ground is surrounded by development".*

*Alan Williams was told in a briefing note from the Head of Development & Regeneration (11 September 2000) that Underhill was "indefensible" in the green belt.*

*e) Alan Williams ignored a clear warning from David Stephens over the value of the land (briefing note 30 May 2001)*

*f) Alan Williams ignored a clear warning that Barnet Football Club's proposals gave the club "the lion's share of the development value whether or not they remain within the Borough" (briefing note 30 May 2001).*

*g) Alan Williams appears to have withheld the report on sale from going to Cabinet.*

*h) Alan Williams was warned by Barnet Football Club that it would have to relocate outside the Borough if a deal could not be done.*

*i) Alan Williams's clear intent was to sell Barnet Football Club the freehold so that the land could be redeveloped to pay for South Underhill and keep the club in the Borough.*

*The Chief Valuer clearly warned Alan Williams that the value of the land had to be more than £10,000 as the club wanted to use the freehold as security for a bank loan. Although Alan Williams stated in an e-mail (30 May 2001) that LBB was not going to allow the club to "sell the site and move away from the Borough with any receipts" he nonetheless approved the Delegated Powers Report which stated only that "the Council **may** share in any enhanced value" (emphasis added). When Cllr Chopra approved the Delegated Powers Report (4 November 2001) it was conditional upon Alan Williams similarly approving the action.*

*The word "may" in the Delegated Powers Report is significant as it demonstrates that LBB knew in advance there were circumstances where the Council would **not** receive any further payment. To justify the £10,000 down payment, the Council was supposed to receive a proportion of the future development value absolutely, and not conditionally.*

*The Chief Valuer stated in his private file note "Despite some of the comments by Alan Williams about not allowing Barnet Football Club to take any value out of Underhill, comments from Barnet Football Club about needing financial assistance from the Council and by Alan Williams tend to suggest that there was a double agenda which not all officers, including myself, were being fully advised about."*

*The Chief Valuer prepared a report which was due to go to the Cabinet on 16 July 2001. He sent the draft to Cllr Chopra on 2 July 2001 who approved it subject to Alan Williams's agreement.*

*On 5 July 2001, the Chief Valuer sent the draft report to Alan Williams asking whether it should go to the July Cabinet or be held over until October. There does not appear to be a reply on file, but on 26 October 2001, the report re-appeared in the form of a Delegated Powers Report.*

*Test for wilful misconduct:*

- *Alan Williams was told that the land was worth more than £10,000*
- *Alan Williams was told that the proposed deal did not give LBB the appropriate share of future development value.*
- *Alan Williams knew that the land was indefensible in the green belt and this would have affected its value upwards.*
- *Alan Williams knew that the transaction should not have been dealt with using a Delegated Powers Report because of the underlying value of the asset (which would have allowed Barnet Football Club to pay for South Underhill).*
- *Alan Williams knew that the matter should have been reported to Cabinet.*
- *By ignoring professional advice, **Alan Williams clearly had no regard for the question of whether what he was doing was right or wrong.** He simply wanted the deal done.*
- ***His actions appear not to be negligent or careless but, rather, deliberate.***

*The objectors contend there is sufficient evidence to prove wilful misconduct.*

### **Consideration**

295. We believe that the issues put forward by the objectors cover all the matters that it is necessary for us to deal with, and we address each in turn below.

a) Alan Williams was undoubtedly the key Member driving this sale of Underhill forward.

296. We consider that the disposal was effectively initiated by Mr Alan Williams when he wrote to the Club on 14 March 2001 indicating that the Council was willing to sell the freehold. No other member was consulted and the Cabinet did not debate the issue. At that date, Mr Alan Williams had no authority in law to commit the Council to sell the freehold, as the rules under section 101 of the Local Government Act 1972 did not allow a member the ability to take action of this kind. However, the Council was operating a shadow cabinet arrangement anticipating the new constitutional arrangements based on the Local Government Act 2000 that came into force in July 2001.

b) Barnet Football Club actually expected Alan Williams to negotiate terms directly with them (Minutes of meeting, January 2001) (we do not know if this happened due to Alan Williams's files being shredded))

297. It does appear from correspondence that at various stages in the negotiation, the Club would have liked to have had discussions directly with Mr Alan Williams. However, we have found no evidence that any such discussions took place. Negotiations were between Mr David Stephens and Mr Graham Slyper. Mr Alan Williams was never directly involved in any detailed negotiations although he was informed about developments.

c) Alan Williams publicly stated that he wanted to de-designate the land to allow Barnet Football Club to sell the plot for development (Barnet Press, September 2000)

298. Mr Alan Williams had been involved with the various proposals for a new stadium and the proposals for new stadium that were developed. His involvement consisted of receiving copies of correspondence, briefing notes and at various times attending meetings. We are of the view that he was aware of the possibility of Underhill being sold for residential purposes, with the proceeds being invested in a new stadium, as he received copies of documents that indicated such a possibility. Mr Max Caller's letter to the Club in May 2000 (*Document 31*) stated:

*'... if you decide to move and seek to build a new stadium outside the Borough there can be no prospect that any of the capital receipts from Underhill will go towards that project.'*

299. It is evident that in 2000, reports mentioning the possibility of Underhill being sold for residential purposes had been discussed and it was also the view of officers that Underhill was capable of being de-designated. In that year the Council issued a draft UDP for consultation containing the proposition that Underhill should be de-designated from green belt status. We find that statements made by Mr Alan Williams to the press in respect of de-designation were consistent with the draft UDP.

*d) Mr Alan Williams stated "In planning terms there is no reason why we need to take the site out of the green belt in order to develop Underhill. But it is a nonsense that it is in the green belt - the ground is surrounded by development". Alan Williams was told in a briefing note from the Head of Development & Regeneration (11 September 2000) that Underhill's status as part of the green belt was "indefensible"...*

300. It appears that Mr Andrew Barry-Purssell expressed the view that Underhill should be taken out of the green belt. That position was consistent with the Council's actions in putting forward revisions to the UDP seeking to de-designate the site as green belt. In discussions with Mr Andrew Barry-Purssell, Mr Alan Williams would no doubt have heard such opinions and have been influenced by them. It is our understanding that buildings such as a stadium for recreational purposes can be built in the green belt, which could therefore have included an expanded Underhill.

*e) Alan Williams ignored a clear warning from David Stephens over the value of the land (briefing note 30 May 2001)*

*f) Alan Williams ignored a clear warning that Barnet Football Club's proposals gave the club "the lion's share of the development value whether or not they remain within the Borough" (briefing note 30 May 2001).*

301. We have been told that the briefing note of 30 May 2001 was designed to inform officers and Mr Alan Williams, the Leader, of the state of negotiations. It makes reference to draft heads of terms having been received from Mr Graham Slyper, which Mr David Stephens describes as being designed to give the Club the lion's share of any development value. (*Document 99*) The briefing note says that this was the Club's position and not the Council's. The note also sets out a range of calculations that might be used to determine the value of the freehold. We have no evidence to show that Mr Alan Williams ignored any clear warning from Mr David Stephens concerning the value of the land and its development value.

*g) Alan Williams appears to have withheld the report on the sale from going to Cabinet.*

302. We have no evidence to show that Mr Alan Williams intervened to stop the draft cabinet report going to the July 2001 Cabinet. On the basis of the information before us we consider that Mr David Stephens had not then finalised the report and obtained all the necessary comments. We know that Mr Jeff Lustig, the Borough Solicitor, had not commented by the day of the Cabinet. As the report did not reach Cabinet, it may have either occurred to Mr David Stephens, or alternatively it may have been put to him by a colleague that the disposal could be dealt with by way of a DPR. We cannot be sure what exactly occurred but it is evident that once a draft DPR had been prepared no further consideration was given to the matter going to a later meeting of the Cabinet.

*h) Alan Williams was warned by Barnet Football Club that they would have to relocate outside the Borough if a deal could not be done.*

303. The Club threatened to move out of the Borough, which is evidenced in a letter dated 6 March 2001, (*Document 84*) expressing concern at the lack of progress.

*i) Alan Williams's clear intent was to sell Barnet Football Club the freehold so that the land could be redeveloped to pay for South Underhill and keep the club in the Borough.*

304. It had been anticipated in previous proposals that the proceeds of Underhill would be part of the potential funding of a new stadium. It is also one of the terms of the freehold sale agreement: if the Underhill site is sold at any time, the proceeds can be invested in any new stadium designed for association football if it is located within the Borough. Furthermore, unless a sale takes place in the period to 27 March 2012, the Holding company of the Club will be able to retain all the proceeds. If the sale takes place within the next ten years (between 2002 and 2012) and the Club does not invest in a stadium in the Borough, the Council receives 60% of the proceeds. It was the original intent for 60% of the proceeds to be retained for the Council's benefit except in the case that the Club relocated to a new ground within the Borough and remained there for at least 10 years.
305. Mr Alan Williams explored with officers a number of options in respect of possible stadium developments and evidence shows that the proceeds of any disposal of Underhill might have been reinvested in a new stadium. However, there is no evidence that the sale of the freehold was directly linked to redevelopment plans for Underhill.

**Other points put to us by the objectors**

*The freehold as security*

306. There is no evidence before us that the Club raised or intended to raise loans on the basis of the increased value of the Underhill ground following the acquisition of the freehold. At present, the land still remains in green belt and has no planning permission for residential development. Hence, whilst there is reference in the documentation (*Document 99 Para 5*) to the Club raising finance, it appears to be speculation that is not borne out by any factual evidence.

*A double agenda*

307. The expression 'double agenda' is cited by the objectors as a quotation from Mr David Stephens. "Despite some of the comments by Mr Alan Williams about not allowing Barnet Football Club to take any value out of Underhill, comments from Barnet Football Club about needing financial assistance from the Council and by Mr Alan Williams tend to suggest that there was a double agenda which not all officers, including myself, were being fully advised about."
308. The political agenda of assisting the football club was not a private agenda. It may be that there were political priorities such as being seen to be supporting the Club and avoiding adverse publicity, but we have not identified evidence that suggests that Mr Alan Williams departed from proper Local Government behaviour.

*Use of DPR*

309. The events noted by the objectors are not quite in accord with our information as the draft DPR was first prepared in July 2001. However, there is no evidence that Mr Alan Williams asked for the sale to be dealt with by DPR. It is our view that the most probable scenario is that this decision to use the DPR approach was taken by officers.

*Mr Alan Williams was told that the land was worth more than £10,000*

310. Based on the information before us Mr Alan Williams relied on officers to negotiate the sales value.

*Mr Alan Williams was told that the proposed transaction did not give LBB the appropriate share of future development value.*

311. Based on the information before us the deal was designed to provide the Council with a share of development gain but the DPR and sale agreement did not provide the arrangements that were intended.

*Mr Alan Williams knew that the land was indefensible in the green belt and this would have affected its value upwards.*

312. During 2000 this was Mr Alan Williams' position. By June 2001 it was known that the GLA was not minded to support de-designation but was prepared to allow a development of a stadium on green belt land. The ability for disposal with development potential was apparently less likely than it had appeared in 2000.

*Mr Alan Williams knew that the transaction should not have been dealt with using a Delegated Powers Report because of the underlying value of the asset (which would have allowed Barnet Football Club to pay for South Underhill).*

313. There is no evidence before us to support this assertion.

*Mr Alan Williams knew that the matter should have been reported to Cabinet.*

314. There is no evidence before us to support this assertion.

*By ignoring professional advice, Mr Alan Williams clearly had no regard for the question of whether what he was doing was right or wrong. He simply wanted the deal done. His actions appear not to be negligent or careless but, rather, deliberate.*

315. There is no evidence before us to suggest that he ignored professional advice.

#### **Consideration of other matters**

316. We have considered whether the threat to move out of the Borough set out in the Club's letter dated 6 March 2001 prompted Mr Alan Williams to say that the Council would sell the freehold. AG Bompas QC in his High Court judgement saw a direct link between the Club's letter of the 6 March 2001 and Mr Alan Williams' reply on 14 March 2001 when he indicated the Council's willingness to sell the freehold. We see the same direct linkage.

#### **Determination**

317. Applying our tests we have concluded that the loss that arose to the Council did not result from the actions of Mr Alan Williams. We do not therefore propose to take any action against Mr Alan Williams under s18 Audit Commission Act 1998.

#### **Statement of Reasons**

*Did a loss arise from Mr Alan Williams's activities?*

318. The loss that arose to the Council did not result from the actions of Mr Alan Williams, as the sale was approved by DPR, rather than by submission to members. We have no evidence to suggest it was Mr Williams who determined that the DPR route should be employed.

*Is there evidence of misconduct that caused the loss?*

319. The question arises as to whether Mr Alan Williams caused the loss by influencing either the transaction or the manner in which it was handled. We have found no evidence to support either case. We conclude that Mr Alan Williams did not set any parameters for the transaction and did not imply that the sale would be at anything other than best consideration – such matters being left to officers. The objectors would say that he was unwise to act in such a manner and that is a matter of opinion. However, his letter of 14 March 2001 was merely a statement of intent and the officers of the Council had ample time to intervene and comment if the transaction were in any way questionable. It is evident that officers did not intervene.

320. We have not identified any misconduct in any of Mr Alan Williams' other actions, including his dealings with Mr Tony Kleanthous, and the disposal process.

*Was the misconduct deliberate or the result of reckless indifference?*



321. As we have found no evidence of misconduct, we do not need to consider whether his actions were deliberate or reckless

## Mr Leo Boland

322. Mr Leo Boland was appointed Chief Executive with effect from 1 January 2001. He had previous appointments with other local authorities but this was the first time that he had worked for Barnet. Mr Leo Boland describes himself as a professional manager and has a Master of Business Administration postgraduate degree, but has no further qualification in finance, valuation or law. He had no formal handover from the previous Chief Executive, Mr Max Caller, and whilst they had some contact it fell short of a comprehensive briefing. Mr Caller had left in June 2000, and in the intervening period the post had been held on an acting basis by Ms Rita Dexter.

### Mr Leo Boland's role

323. As Chief Executive, Mr Leo Boland was both Head of the Council's paid service, and also its principal officer.
324. During our interview with Mr Leo Boland, we asked for his view of the responsibilities of the Head of Paid Service. He commented *'it's a very restricted role, the Head of Paid Service; it's basically about making sure that the Council has the right money and people.'* (Document 318, page 41)
325. We have also received representations from solicitors acting for Mr Leo Boland, (Document 378) which touch on his role as Chief Executive. They stress his responsibility to set strategy at a high level through the corporate plan, ensure systematic monitoring and management of performance against such a plan and to keep under review the performance of Directors and Heads of Service at their jobs.
326. According to the submission, Mr Leo Boland:
- inherited a situation where there was no systematic matching of operational decisions against the objectives of Council policy, there being an absence of proper planning, project and performance management...
  - had every reason to believe in and was entitled to rely on the professional competence of the officers advising on the sale of the freehold interest in Underhill

### His actions

327. Although during his induction period prior to taking up his post, Mr Leo Boland indicated that he had visited the Underhill Stadium with Mr David Stephens, he has told us that he had no involvement with any matters relating to the Club before that date. In the period following his appointment, he had limited involvement with any developments concerning the Club that were taking place. He effectively left the issues in respect of the Club to be dealt with Mr Andrew Barry-Purssell and other officers. Throughout 2001 he had no involvement with the Chairman of the Club nor any of its directors, nor any involvement in determining the sale value of freehold, nor any meetings solely concerning the Club.
328. Mr Leo Boland has told us that during the early part of 2001 his routine meetings with the then Leader, Mr Alan Williams included discussion of matters concerning the Club. He advised us that during that meeting, the Leader confirmed that there was no commitment by the Council to provide any funding to support the Club's ambitions for a new stadium.
329. Mr Leo Boland has confirmed that he received a request for comments on the draft DPR under cover of an email dated 23 July 2001 from Mr David Stephens. He also confirms that he responded 7 minutes later with the short response *'I am happy with it.'* In his interview with us (Document 318, page 43) he expressed the views that:
- *The constitution did not require his comment to the DPR and with hindsight he should have refused to comment and sent it back to Mr David Stephens; and*
  - *He did not expect the DPR to be issued with his 'I am happy with it' comment included and he*

*said that he saw the 23 July 2001 distribution as the first stage in a process of developing the DPR.*

330. Mr Leo Boland added 'I've never seen this in any other Council, this Head of Paid Service observation. ... I never was asked formally for my Head of Paid Service's observation, so, 'I am happy with the report' is not a Head of Paid Service's observation. That was what I said in response to the email when I said, 'I was happy with this issue going forward' is what I meant. The only way I would only comment on it as Head of Paid Service per se would be to say, 'This has no staffing or resources implications.... And we don't have it now, so we just have one paragraph that deals with staffing, legal, financial, constitutional, equalities issues. That's, you know – that's best practice. This was not best practice, but you can't change everything in the first six months'. (Document 318, page 41)
331. Subsequent representations to the auditor (*Document 387*) argue that Mr Leo Boland was required as Head of Paid Service to comment on staffing implications. By implication, it is argued he was not required to comment in his role as Chief Executive. Mr Leo Boland has confirmed to the auditor that the disposal of a freehold interest to a long leaseholder is a routine matter in a local authority and he saw the disposal of the freehold interest in that light. Given the protections within the framework in the event of development gain he saw no reason for concern or a need for him to take more than a passing interest.

#### **Points raised by the Objectors**

332. We have received two objections that allege Mr Leo Boland caused the Council losses as a consequence of wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. Their arguments in support of the objections are repeated below for completeness.

- a) *Leo Boland claimed that "the decision (to sell Underhill) had become irreversible by the time he commenced work". (Report of Deputy Chief Executive, June 2004)*
- b) *Evidence proves Leo Boland was involved in the transaction at least 8 months prior to sale – more than sufficient time to check/amend the details.*
- c) *Leo Boland was required to approve the Delegated Powers Report in his position as Head of Paid Services. This required him to pay more than a cursory glance at relevant information.*
- d) *Evidence proves that Leo Boland spent a maximum of 7 minutes studying the Delegated Powers Report before giving his approval (e-mail 23 July 2001).*
- e) *Leo Boland claims he didn't think the matter was strategic despite knowing that green belt land has statutory protection.*
- f) *Leo Boland "did not feel he should intervene" (Report of Deputy Chief Executive, June 2004). What is the purpose of a Chief Executive if not to intervene in a major transaction which he would have known would arouse controversy and was procedurally incorrect?*
- g) *Leo Boland was shown the site prior to taking up his appointment. Why would this have occurred if the transaction was not deemed important?*
- h) *Leo Boland told the Land at Underhill Inquiry that it had not seemed "a great issue to sell a lease to a long leaseholder". The lease was not sold to the leaseholder, which Leo Boland should have known from reading the correspondence. The Land at Underhill Inquiry concluded that Leo Boland should have asked more questions than he did.*
- i) *Leo Boland wrote to a resident in July 2002 regarding the sale in terms which he should have known were not true.*
- *Leo Boland claimed "as the club was in possession of a 99 year lease on site, with 85 years remaining, it would not have been appropriate to seek bids from any other party"*
  - *This is clearly in breach of section 123 of the LGA 1972*
  - *Underhill was not sold to the Club*

- *Leo Boland claimed that the sale “makes provision for any surplus from subsequent disposal of the site to be shared between the Council and Barnet Football Club”. This is misleading and not correct.*

- *Leo Boland claims the sale was in line with Council’s constitution. It wasn’t.*

*It is important to consider the words of Leo Boland’s predecessor, Mr Max Caller, who wrote to BFC on 18 May 2000:*

*“Your board needs to be aware that if you do decide to move and seek to build a new stadium outside the borough there can be no prospect that any of the capital receipts from Underhill will go towards the project. The only way in which I have been able to contemplate resources from Underhill being used is that the Council as freeholder of Underhill and as freeholder of any other proposed site for the stadium was going to secure the necessary benefit in terms of sport provision and community facilities. A decision to develop outside the borough means that the Council will have to act as a commercial freeholder and ensure that in any development of the Underhill site it receives a capital payment commensurate with normal property arrangements. The Council could not take a decision which would vary this and your board needs to be under no illusions in this respect.”*

*Mr Caller clearly understood that the Council could not simply give away the capital value of Underhill and that Leo Boland would require conditions if the value of Underhill was to be used towards a new stadium. His final sentence is clear and unequivocal.*

*In August 2000, the former Head of Development & Regeneration informed the then Acting Chief Executive that he was lodging, on BFC’s behalf, a suggestion that a hectare of land be de-designated from the green belt to allow construction of a second stadium.*

*Did Leo Boland have sight of either of these two letters? If so, he cannot have failed to have understood their meaning in the context of the Underhill sale and valuation, and to have consequently taken no action cannot be deemed merely careless or negligent; rather it suggests that Leo Boland deliberately ignored pertinent information.*

*If Leo Boland did not read the correspondence, this also suggests wilful misconduct. Given that Leo Boland was a Statutory Officer whose authorisation for the sale was required, he had a duty to familiarise himself with the transaction (even though he was not the instigator). He therefore appears to have failed to do something when he knew he should have done it.*

*It is not credible to suggest that a professional person would take over a job from his predecessor without familiarising himself with the file.*

*(Note: It is not clear why the former Head of Development & Regeneration thought it necessary for the land to be de-designated given that sports stadium development is permitted on green belt land. Perhaps a clue lies in the statement from Mr Kleanthous at a meeting with Officers (14 August 2000) in which he expressed concerns at Leo Boland’s proposals for a new stadium on the existing footprint (plus a small additional parcel of land) because “it did not make the necessary provision for commercial activity” (Land at Underhill Inquiry 4.46(c)). This is further evidence that Officers knowingly valued the land on the wrong basis.)*

*From the time of his appointment, to the current day, Leo Boland appears to show scant regard for the facts in this matter by continuously suggesting that the land was sold to the lessee. To continue making the same mistake, and to compound that mistake by giving out other information (Paragraph 4.i above) which he should have known to be erroneous, indicates either a lack of understanding of simple facts, which is not credible, or is symptomatic of the intent to obfuscate.*

*Given that Leo Boland was aware of the desire of the previous Administration to sell Underhill, it was incumbent on him to take extra care to ensure that the sale was carried out lawfully and that the Council’s position was properly protected. That he did not do so suggests wilful misconduct because, by his own admission, he deliberately did not intervene when he could and should have, and therefore **did not care whether the sale was lawful or not**. He had no intention of preventing the former Administration from carrying out its wish to sell the land.*

## **Consideration**

333. We believe that the issues put forward by the objectors cover all the matters that it is necessary for us to deal with, and we address each in turn below

- a) *Leo Boland claimed that the decision to sell had become irreversible by the time he commenced work*
- b) *Evidence proves Leo Boland was involved in the transaction at least 8 months prior to sale*
334. It is evident that from July 2001 he had some awareness but he regarded the disposal of the freehold interest as a routine matter and not one that warranted his personal attention.
- c) *Cursory review of the DPR*
- d) *Evidence proves that Leo Boland spent a maximum of 7 minutes studying the DPR*
335. The constitution places responsibility on the Head of Regeneration and does not refer to the decision being taken in conjunction with the Head of Paid Service and other statutory officers. It is arguable whether there was any obligation on Mr Leo Boland to consider the report. Nonetheless, the DPR form that was used does refer to the Head of Paid Service and it would seem that custom and practice was for the author of DPRs to seek comments from senior officers. Since Mr Leo Boland responded it suggests that at the time he considered that he had a role in the process. It does appear that he regarded the matter as routine and skim read the report very quickly.
336. We have considered the argument advanced that since the DPR was to be signed by the Head of Paid Service, Mr Leo Boland did not need to consider any matters other than the staffing implications. We do not believe that a reasonable officer would have so compartmentalised his views that he would not have regard to the broader aspects of the decision. We do not find such a stance credible
- e) *Leo Boland claims he did not think the matters was strategic*
- f) *Leo Boland 'did not feel he should intervene'. What is the purpose of a Chief Executive if not to intervene in a major transaction?*
- g) *Leo Boland was shown the site prior to taking up his appointment. Why would this have occurred if the transaction was not deemed important?*
337. It is evident by Mr Leo Boland's actions that he did not regard the issue as warranting a significant amount of his attention. Mr Leo Boland has explained that he visited all the wards of the Borough to gain an understanding of the issues facing the Council, its nature and characteristics. The Club was only one of the many sites he visited.
338. The objectors refer us to a letter sent by Mr Max Caller dated 18 May 2000 (*Document 31*) and the draft Unitary Development Plan issued in July 2000 (*Document 38*) suggesting that a hectare of land be de-designated to allow for the development of a second stadium. The objectors assert that Mr Leo Boland had seen these letters and could not have failed to understand their significance in the context of the value of the Underhill freehold. They believe it is not credible that a professional person taking over a new appointment would not have familiarised himself with the background and read the file. We have seen no evidence that he did familiarise himself with the historical background to the Club and the Council in any detail. We accept that he relied, as he was entitled to do, on the officers who remained in office to provide the continuity and link to previous dealings and relationships.
- h) *Leo Boland told the Land at Underhill inquiry that it had not seemed 'a great issue to sell a lease to a long leaseholder.' The lease was not sold to the leaseholder, which Leo Boland should have known...*
339. The freehold interest was sold to Barnet Football Club Holdings Limited, a company owned by Mr Tony Kleanthous, as opposed to the Club, which was a wholly owned subsidiary of the holding company. Although a major part of the rationale for the sale was to encourage the Club to remain within the Borough, we have not been able to find that any of the officers involved, including Mr Leo Boland, made enquiries into why the sale was to the holding company.
- i) *Leo Boland wrote to a resident in July 2002 regarding the sale in terms which he should*

*have known were not true*

340. We are told that Mr Leo Boland wrote in July 2002 to an elector (Mrs Anderson) giving information relating to the sale that was not true. That allegation relates to the 2002/3 financial year and has no bearing on the 2001/2 financial accounts.

### **Consideration of other matters**

341. We have considered the actions of Mr Leo Boland against what we would have expected from an experienced and politically astute chief executive. We would have expected him to have liaised with the Borough Solicitor and Treasurer on the legality and prudence of committing the Borough to effectively funding a professional football stadium when there was no Council authority to do so. It is apparent that he did not do so.
342. We have also considered whether Mr Leo Boland should have taken extra care to ensure that the sale was carried out lawfully and that the Council's position was properly protected, given the political sensitivity of the issue. In practice Mr Leo Boland did not seek to be briefed and for practical purposes had put himself at a distance to all matters concerning the club. He said he saw the sale of a freehold interest to the long leaseholder as a routine matter, and so it can be. In the context of a football club, especially when the sale potentially involved contingent assets amounting to millions of pounds it was not routine and he should have given more time to its consideration

### **Determination**

343. Applying our tests we have concluded that the loss that arose to the Council did not result from the actions of Mr Leo Boland. We do not therefore propose to take any action against Mr Leo Boland under s18 Audit Commission Act 1998.

### **Statement of Reasons**

*Did a loss arise from Mr Boland's activities?*

344. The loss that arose to the Council did not result from the actions of Mr Leo Boland. He did not play a fundamental role in the disposal, and could not reasonably be expected to have done so.

*Is there evidence of misconduct that caused the loss?*

345. Notwithstanding the matters raised above, we do not consider that Mr Leo Boland's actions fell significantly below the standard we would have expected as:
- a) We believe it reasonable for a Chief Executive to consider only the strategic issues that face the Council, leaving matters of detail to his subordinates
  - b) We also consider it reasonable for him to expect that having delegated responsibility for certain matters he would receive a further report in the event of difficulty arising to the point that there was a need for reconsideration. It is evident that during the period under review there were several issues concerning the Club that should have been considered together as collective issues but they were not. Individual developments were considered in isolation. No officer reported back to Mr Leo Boland, or indeed to the Leader questioning for example whether in the light of the planning application for South Underhill, it was still appropriate to sell the freehold.
  - c) We accept that it is not appropriate to blame a new officer for flaws in procedural arrangements that existed prior to his appointment and where he has had little opportunity to make changes. Mr Leo Boland did not have and could not be expected to have a full understanding of the development of the scheme, or of the underlying processes including the use of DPRs.

*Was the misconduct deliberate or the result of reckless indifference?*

346. As we have found no evidence of misconduct, we do not need to consider whether his actions were deliberate or reckless.

## Mr David Stephens

347. Mr David Stephens has been employed by Barnet for over 20 years. He is a professional member of the Royal Institution of Chartered Surveyors (RICS), and is thus bound by the professional requirements of his Institute and the guidance that it publishes insofar as they relate to local government.
348. He informed the auditor that during his time at Barnet, his role grew from being Assistant Borough Valuer supported by a small team to becoming Property Services Manager, when he was responsible for the whole team. For the period between 1998 and 2002, he was the Borough's Chief Valuer. He was not a member of the management team and reported to the Head of Development and Regeneration.

### Mr David Stephens' role

349. We have read a job description (*Document 400*) of the post of Chief Valuer, which the Council believes dates to 2000/1. Under the heading 'Principal Accountabilities' it notes that the postholder has the responsibility to '*Identify and provide best professional practices and acquire and implement up-to-date skills to ensure maximum benefit for the Council in all tasks undertaken.*' We understand from this and our interviews with Mr David Stephens that it was his responsibility to ensure that the Council received proper advice on its property transactions, whether he dealt with them himself, or they were handled by another member of his department. Such advice was required to ensure that the Council acted in accordance with its statutory responsibilities, especially s123 of the Local Government Act 1972.
350. As a member of the RICS, Mr David Stephens was qualified to deal with the valuation of the Council's property interests himself. It was part of his role to request external advice on particular issues.
351. The Council's constitution delegates to the Head of Development and Regeneration a number of detailed responsibilities in relation to the Disposal of Land and Property (*Document 356*). In practice, many of these obligations were in Barnet discharged by Mr David Stephens, although he had no power to sign off disposals of land.

### His actions

352. Mr David Stephens had some involvement with each of the stadium options that were considered in the period 1998 – 2002. He developed valuations, a framework for capitalising revenue costs and had awareness of the potential use of a joint venture company for the Copthall proposals. He had similar involvement with Claremont Road proposals. In each of these instances, Mr David Stephens received instructions to take action direct from the then Chief Executive, Mr Max Caller (who took a close interest in the Club's matters) rather than through his line managers.
353. During this period he had contact with the Club's directors, and he had dealings with Mr Slyper by meeting and also by correspondence. We note that there has been a tendency throughout the documentation we have examined, for correspondence concerning the Club to be sent to Mr David Stephens directly especially following the departure of Mr Andrew Barry-Purcell in June 2000.
354. Mr David Stephens advised us that during 2000, he was also involved with other proposals relating to the Club concerning an extension of the existing lease arrangements and we have also seen correspondence concerning a proposed assignment of the Underhill lease to a holding company. Mr David Stephens also told us that it was Mr Max Caller who first told him that the Council was prepared to sell the freehold. Mr Max Caller had left the Council in June 2000, being replaced temporarily replaced by Ms Rita Dexter and then permanently by Mr Leo Boland from 1 January 2001.

355. Following the interchange of correspondence between the Club and Mr Alan Williams, the Leader indicated a willingness to sell the freehold of Underhill in February 2001. This information was relayed to Mr David Stephens. On 3 April 2001 Mr David Stephens wrote to Mr Tony Kleanthous stating that he had instructions to enter into negotiations for the freehold sale of the Underhill Stadium. His letter indicated that any terms provisionally agreed would need to be reported to the appropriate committee for approval.
356. Between April and June 2001, Mr David Stephens negotiated the consideration for the freehold directly with Mr Graham Slyper. At various times he reported the position reached, by way of departmental briefing notes that were shared with other officers and at times with Mr Alan Williams. There was no involvement of other valuers in the process and no use of external advice. We are informed that Council policy at the time was that external consultants were not employed for any purpose. There is no evidence of any effective departmental overview system in place. Mr David Stephens' valuations in respect of this transaction, rightly or wrongly, represented the Council's position.
357. The framework for the claw back provision (if Underhill were sold following a relocation of the ground to another location) was developed by Mr David Stephens. This was Mr David Stephens' attempt to protect the Council and meet the wishes of Mr Alan Williams, who had in correspondence with Mr Andrew Barry-Purcell in January 2001 expressed concern about protecting the Council's position as a condition of the sale of the freehold. Again there is no indication that this arrangement was subject to any internal review or debate.
358. The attitude of the Chief Executive, Borough Solicitor and Borough Treasurer was not to question another professional. Following the departure of Mr Andrew Barry-Purcell at the end of June 2001, we were informed by his successor Mr Paul Chadwick that he took little direct interest in the work of Mr David Stephens and effectively managed with a light touch, focusing on other issues. Mr David Stephens told us that he could not recall when anyone within the Council had questioned his valuations.
359. In July 2001, Mr David Stephens drafted a Cabinet report in respect of the disposal of the freehold and sought clearance from Mr Alan Williams, the Executive Member for Resources and the statutory officers. In the event the report was not submitted to the meeting of the Cabinet held in July, although there is evidence that Mr David Stephens sought clarification about when it would be dealt with in an e-mail to the Leader, copied to four senior officers. We are not aware of any reply, and we accept that it was not Mr David Stephens' role to draw up the Cabinet agenda.
360. It was then decided that the matter should be dealt with by DPR. We have sought to understand by whom this decision was taken, but without success. Representations for Mr David Stephens note that he *'thinks it was Mr Chadwick'* (Document 386, page 6), although Mr Paul Chadwick has no recollection of this. Mr David Stephens has also told us that the DPR route was followed as the constitution provided for it to be employed in cases such as this, not for any other reason such as urgency. A draft DPR was prepared in similar terms to the draft Cabinet report and circulated for comments at the end of July 2001 to Mr Leo Boland, Mr Jeremy Jaroszek and Mr Jeff Lustig.
361. During October 2001, the Club made an application for a new stadium in South Underhill and copies of the briefing note explaining the application were shared with Mr David Stephens and other officers. Mr David Stephens can be expected to have been aware of the articles in the local press about the development.



362. Despite the wish to move the disposal forward the DPR appears to have lain dormant until the end of October/beginning of November 2001. What then happened is a matter of dispute, although a letter from Mr Graham Slyper to Councillor Anita Campbell thanks her for her intervention and adds that '*clearly the matter had been overlooked*' (*Document 152*). Councillor Anita Campbell also notes that she spoke to Mr David Stephens and was told that there was '*a bit of a hold-up*' (*Document 321, page 17*). However representations for Mr David Stephens note that his actions were the '*result of instructions given by Mr Chadwick*' (*Document 386 page 7*) Whatever the cause, Mr David Stephens advised Mr Graham Slyper that he was instructing the Council's legal department to prepare the documentation for the sale. He prepared a DPR, which was considered and approved by Councillor Danish Chopra and Mr Paul Chadwick.
363. Based on the evidence before us Mr David Stephens when preparing the final version of the DPR did not:
- a) reflect the concerns raised by Mr Jeff Lustig on the form of the claw back provisions in the DPR or make any changes to alter the framework of the deal
  - b) liaise with Mr Alan Williams to confirm that he was content with the disposal given the changed circumstances i.e. the planning permission
  - c) refer the matter back to Mr Leo Boland, Mr Jeff Lustig or Mr Clive Medlam for further consideration
  - d) check with the Leader that he was content with the disposal, despite it having been specifically requested by Councillor Danish Chopra that this be done
364. Having passed the signed DPR to the legal department, he liaised with Mr Steven Strange and finalised the documentation with him. At certain stages in the development of the finalised disposal arrangements, Mr Steven Strange sought Mr David Stephens's agreement to the form of words being developed for the overage agreement. Mr David Stephens made changes but did not spot the fundamental error in the wording.

#### **Points raised by the Objectors**

365. We have to consider two objections that allege Mr David Stephens caused the Council losses as a consequence of wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. The objection is repeated below for completeness.

- a) *David Stephens produced a valuation showing BFC's lease as being worth £165,000.*
- b) *David Stephens estimated the open market rental value of Underhill at circa £30,500 p.a.*
- c) *During negotiations, David Stephens advised AW that the Council should retain 100% of any future development value.*
- d) *The signed contract means that the Council will receive either 60% or 0% depending on the circumstances.*
- e) *Who overruled David Stephens's recommendations and on what legal authority?*
- f) *David Stephens says he was instructed to sell the land under delegated powers but can't remember precisely by whom.*
- g) *When asked about the status of the buyer, David Stephens says he was instructed to sell to Mr Kleanthous' private company but again can't remember by whom.*
- h) *David Stephens Ignored comments from the Principal Legal Assistant with regard to the 10 year cap*
- i) *Advised the Court that his valuation was on the basis that the land remained in the green belt*
- j) *David Stephens knew that the Council were negotiating to de-designate, which is at variance with his evidence to the Court.*

*k) David Stephens has voluntarily provided the Auditor with his comprehensive private files*

*One of the key issues relating to the sale of Underhill is the value of the land. If it is worth more than £100,000 then it should not have been sold under delegated powers.*

*Valuation is not an exact science, but David Stephens valued the leasehold interest alone at £165,000 which was clearly substantially above the constitutional threshold.*

*It is not uncommon for the freehold of a property let on a long unexpired lease with a peppercorn or ground rent, to be worth less than the leasehold interest. For example, a lease with 900 years unexpired at a ground rent of, say, £2 p.a. means the freehold is likely only to be worth a few hundred pounds whereas the lease itself would be extremely valuable.*

*For the purposes of the Constitution, the minimum value that should have been applied was the marriage value, i.e. the value of the leasehold and freehold interest combined. On a simple capitalisation of the ground rent, LBB valued the freehold at £10,000. Whilst this methodology is inappropriate in this instance, based on the Council's own figures, the value of Underhill was at least £175,000.*

*In reality it was worth more because there is a premium attached to owning both the freehold and leasehold interest. This is before taking into account the speculative value of the land which would have increased its value considerably further.*

*On a straight forward commercial basis, if the open market rent was £30,500 then the freehold would have been worth, say, £358,800 based on a generous yield of 8.5%.*

*David Stephens was therefore well aware that the land was worth far more than the maximum amount permitted to be dealt with by officers under delegated powers. David Stephens is therefore guilty of wilful misconduct **because he knowingly did something he knew to be wrong.***

*In dealing with valuations, the Constitution does not refer only to the value of the Council's interest in a property. It simply refers to the value of the asset, and it is therefore self evident that in the case of land that has been leased the marriage value or underlying value of the asset must be considered. If you do not consider the marriage or underlying value, then in theory there would be nothing to prevent Officers from selling any Council asset by declaring a low value under the threshold with a future claw back.*

*The claw back in this instance was up to 60% of the residential development value and that should have been added to the freehold value.*

*It is not clear who had sight of this valuation, but no Officer or Member who read it could have been in any doubt that the value of the land exceeded the constitutional threshold. Therefore, all those who had sight of David Stephens's valuation are guilty of wilful misconduct **for knowingly allowing the sale to be completed without the proper legal authority.***

*David Stephens claims in his private file that he was "made" to produce the Delegated Powers Report. This suggests that he did so against his will. Any person responsible for forcing an Officer to do something unconstitutional would clearly also be guilty of wilful misconduct.*

*Given the consequences of a section 18 complaint being upheld against him, it would surely be in David Stephens's interest if he could be persuaded to:*

- Provide the Auditor with a list of recipients of his valuation*
- Provide the Auditor with details of the person(s) responsible for instructing him to produce the Delegated Powers Report*
- Provide the Auditor with details of the person(s) responsible for instructing him to sell to BFCH, not BFC or a true holding company of BFC*

*The Deputy Chief Executive has stated (meeting with BRASS, January 2004) that the option to give BFCH 100% of the proceeds of sale if BFC remained in the Borough was the express wish of the previous Administration. This represents the complete opposite of the advice David Stephens gave to AW.*

*Whoever instructed David Stephens to introduce the 100% option (in favour of BFCH) in his*

*Delegated Powers Report must be guilty of wilful misconduct because there are no circumstances under which this arrangement could comply with section 123 (without the approval of the Secretary of State, which had not been sought). Giving away a valuable asset meets the test of deliberately doing something you know is wrong.*

*David Stephens was sent the draft contract by the Principal Legal Assistant who pointed out the inclusion of the ten year cap. David Stephens did not respond to this, despite it being drawn to his attention on two separate occasions. At the very least, David Stephens was negligent to ignore this which would meet the test of unreasonableness as required by the Court under section 17.*

*David Stephens gave written evidence to the court setting out the basis of his various valuations. I am not certain if the Court had sight of the version which included his estimate for the value of the lease, but even if not, David Stephens argued that the valuations which assumed residential development were inappropriate as there was no likelihood of that scenario occurring.*

*However, there is substantial evidence to show that the Council were publicly and privately attempting to de-designate the land. The Deputy Chief Executive stated (meeting with Brass, January 2004) that David Stephens would have been aware of the attempts to de-designate the land in the draft UDP.*

*The witness for BFCH, Mr Graham Slyper (a Director of BFC and a professional surveyor) also provided written evidence to the Court suggesting there was no basis for adopting green belt valuations. This witness was described as unreliable by the Judge.*

*BFC admitted at the subsequent Unitary Development Plan enquiry (March 2004) that both parties were actively seeking de-designation of the land and were negotiating the sale on that basis:*

*• Mr Andrew Troup (BFC's Representative) told the enquiry "The case for the removal of the enlarged site from Green Belt has been readily accepted by the professional officers at the Council and was the agreed position between the Club and the Council from July 2000 until the change in administration (May 2002)".*

*It would appear that the evidence of David Stephens and Graham Slyper may be at variance with the known facts, and it therefore might be appropriate for this aspect to be investigated separately by the appropriate authorities.*

*If a Court took the view that both parties to the sale negotiated the transaction on terms they knew to be unlawfully disadvantageous to LBB (i.e. they did not have 'clean hands') then perhaps it would consider an order to set aside the sale or require BFCH to make restitution.*

### **Consideration**

*a) David Stephens produced a valuation showing BFC's lease as being worth £165,000.*

*b) David Stephens estimated the open market rental value of Underhill at circa £30,500 p.a.*

366. The issue for the auditor in respect of the section 18 objection is whether Mr David Stephens followed acceptable professional practice in determining the valuation of the freehold and the negotiation of the sale price. We have taken advice from Savills, Chartered Surveyors, (*Document 373*) who inform us that in 2001 local authorities had differing ways of commissioning and using internal and external valuers. Some local authorities would have adopted procedures that involved appointing an external adviser to assist with the valuation in cases such as the sale of Underhill freehold. In such circumstances the external valuer should have been provided with a formal set of instructions. Transactions involving football clubs have the potential to be politically sensitive and the value of potential development land is extremely sensitive to a range of considerations and it might be expected that the use of external valuers would be more common in these circumstances. Savills note that Barnet did not adopt such a formal process in this instance and that Mr David Stephens both negotiated the terms of the sale and valued the property. They comment that this removes a layer of check, and places all the work with a single individual. However, Mr David Stephens was reporting to a more senior officer who was himself a chartered surveyor, a process which provides for further review.

367. Savills inform us that in their view, regardless of whether a local authority or a private sector valuer had undertaken the work, the same principles would have been adopted. (*Document 373*) The valuation should have been undertaken in accordance with the relevant RICS standards, which in 2001 were the Practice Statements, Guidance Notes and Appendices of the RICS Appraisal and Valuation Standards published in 1995, known as the Red Book. In the event the valuations set out in the documents headed 'draft proposals for the sale of the freehold' do not fully comply with all the requirements for a full report. However the report does contain the essential minimum requirements to allow a decision to be taken. We have also received representations that the Appraisal and Valuation Standards referred to were not at that time mandatory for local authorities. However, in our view they did represent best practice.
368. Turning to the sale, where an officer is exercising delegated powers he would have to obtain the best consideration that could reasonably be achieved. The effect of the covenants, providing for a future clawback, would have a negative effect on the sale price, reducing or removing the special purchaser premium.
369. The value of the freehold subject to the lease to the club as an investment is considered below but Savills have also commented (*Document 371*) that in their view there appear to be three valuation scenarios:
- The value of the property on the assumption that there were adequate and proper mechanisms to capture the added value
  - The transaction as it was contracted, with imperfect overage provisions
  - The value of the Council's interest on the assumption that there would be no attempt to benefit from any further share of value
370. Against these bases, Savills consider that the price that might have been achieved through an unrestricted sale – the third situation above – would be £250,000, while on the basis of the restrictions actually imposed a bidder might have reduced the final offer to £100,000.
371. Savills also explain that the Club would be regarded as a 'special purchaser', defined by the RICS as someone with a particular reason for acquiring an interest in a property, because of special circumstances. The RICS rules require that in determining market value a special purchaser should be ignored, as a sale to that party could involve a marriage value. The Savills report states '*there are no rules (in valuation or in real life) regarding how marriage value should be apportioned, and it is impossible to predict how an individual will behave in response to any particular opportunity to purchase a property.*
372. Provided proper negotiations had taken place and the price which had been achieved was better than the market value (ie the value that might be expected if the bid of a special purchaser were ignored) then Savills state they would assume that best consideration had been obtained, even if the premium were small. The cash price achieved by the Council was considerably less than Mr David Stephens' opinion of the market value of its freehold interest subject to the lease, but the Council sought to protect its interest by securing a share of the potential uplift from any future development.
373. The existence of a safeguard to secure deferred consideration would be a factor in the decision making, when presented with the price in relation to the estimated value of the Council's own freehold subject to the lease. In these circumstances the sale was justifiable, if not commercially motivated.
374. Savills have reported that such arrangements are relatively common in public sector disposals especially where there is a large uplift in value which may be triggered by events at some stage in the future. In normal circumstances the surveyor negotiating the sale and the solicitor acting for the vendor would expect to have a discussion with their client about the best way of securing this, in parallel with the final stages of the negotiations.

375. It is represented on behalf of Mr David Stephens that s84 of the Law of Property Act 1925 has a material bearing, as that section enables a lessee to apply to the Lands Tribunal to modify user restrictions. We note that any such application could not be made until December 2010 at the earliest, and in any case there is a range of issues on which the Tribunal would have first to be satisfied before granting such a modification.
376. There is no evidence that this possibility was considered at any point in the process by either the Club or the Council. In any case it was not in the interests of the Council to encourage the Club to do so. We do not agree that this option might have had a material bearing on the valuation.
377. Having considered this advice and Mr David Stephens' submissions, we do not believe there is clear evidence that Mr David Stephens did not follow acceptable professional practice.

*c) During negotiations, David Stephens advised Mr Alan Williams that the Council should retain 100% of any future development value.*

378. There is no evidence that any such advice was given. Both Mr David Stephens and Mr Alan Williams reject this suggestion.

*d) The signed contract means that the Council will receive either 60% or 0% depending on the circumstances.*

379. The terms of the sale agreement were intended to protect the Council in the event of the Underhill ground being vacated and development taking place, the basis of that protection was on the following lines.

Scenario	Conditions	Sale Distribution	
		Holding Company	Council
Holding company builds new stadium in Borough, Barnet FC moves to permanent new home and Underhill sold.	Barnet FC must remain and play at new stadium for at least 10 years.	100%	Nil
Club permanently relocates to stadium outside the Borough and Underhill sold.	None (but 10 years might apply).	40%	60%
Club leaves Underhill Stadium or a new stadium built within the Borough and Underhill sold.	Within 10 years.	40%	60%
Club ceases to exist and Underhill sold.	None.	40%	60%

380. However, owing to a drafting error in the DPR which was then incorporated into the sale documentation, the outcome is that after 10 years, the holding company of the football club is entitled to a 100% of any disposal proceeds.

*e) Who overruled David Stephens's recommendations and on what legal authority?*

381. The disposal terms were the ones that Mr David Stephens originated and Mr Chadwick approved and we do not understand the basis of the question.

*f) David Stephens says he was instructed to sell the land under delegated powers but can't remember precisely by whom.*

382. Mr David Stephens has represented to us that it was Mr Paul Chadwick who instructed him to use delegated powers. Mr Paul Chadwick has no recollection of this; in his second interview Mr Paul Chadwick said on being asked about the appropriateness of the DPR route '*I think that it's the kind of thing that others should have been thinking about for me, not relying on a brand new chief officer acting up to think through those issues.*' (Document 365, page 35) There is no evidence before us to suggest any improper pressure was placed on officers to use a DPR.

*g) When asked about the status of the buyer, David Stephens says he was instructed to sell to Mr Kleanthous' private company but again can't remember by whom.*

383. The use of a holding company for facilitating new stadium developments and protecting the Club from various rules established by the Football League had been a feature of proposals emerging in the period 1998 – 2002. The Council and Mr David Stephens had become used to this possibility. It seems that the issue surfaced again in the negotiations with Mr Graham Slyper in April 2001. Mr David Stephens did refer to the holding company in his departmental briefing notes. No officer questioned the status of the holding company and no checks at Companies House or anywhere else took place. We accept that it was not Mr David Stephens' role to undertake such checks.

*h) David Stephens ignored comments from the Principal Legal Assistant with regard to the 10 year cap*

384. Mr Steven Strange did seek confirmation that the draft contracts correctly represented the agreed terms for the disposal. Mr David Stephens did respond to such enquiries but made an error in not identifying the issue over the brackets.

*i) Advised the Court that his valuation was on the basis that the land remained in the green belt*

385. This is the basis of the valuation, however, the possibility of eventual disposal was recognised and that is the reason for the claw-back clause.

*j) David Stephens knew that the Council were negotiating to de-designate, which is at variance with his evidence to the Court.*

386. Based on the evidence before us the position in July 2001 was that the Council's proposals for de-designation were not ones that the GLA was minded to support. The GLA was prepared, however, to contemplate the possibility of a further stadium being developed within the green belt. The possibility of de-designation was recognised and that was why the claw back clause was developed.

*k) David Stephens has voluntarily provided the Auditor with his comprehensive private files*

387. Mr David Stephens' position as he explained it us is that he provided his files to Mr Victor Lyons, the former Conservative Leader. Mr David Stephens has represented to us that without his knowledge or consent Mr Victor Lyons passed the files to the objectors, who passed the file to the auditor.

### **Valuation of the freehold**

388. The assertion by the objectors as reproduced in the following paragraph is that Mr David Stephens undervalued the freehold and that because of alleged undervaluation he was able to progress the sale of the freehold under delegated powers.

*On a straight forward commercial basis, if the open market rent was £30,500 then the freehold would have been worth, say, £358,800 based on a generous yield of 8.5%. Mr David Stephens was therefore well aware that the land was worth far more than the maximum amount permitted to be dealt with by officers under delegated powers. Mr David Stephens is therefore guilty of wilful misconduct because he knowingly did something he knew to be wrong.*

389. As we note above we have taken advice from Savills, who have reminded us that the circumstances at the date of the transaction were very different from those suggested by the objectors. The Open Market Rental Value of the property was assessed for the purposes of reporting a further figure concerning the hypothetical distribution of marriage value but the property was actually let for a term of 84 years at £50 pa. Their view is that in the circumstances of the sale, the actual rent is a relevant consideration, in addition to the deferred value of the reversion at the end of the lease in 84 years and other matters such as the restrictions on use imposed by the lease, and its repairing obligations.
390. Savills conclude '*With the restrictions intended to be imposed, a figure of £100,000 might have been expected.*' This is, of course, the maximum sum permitted if the delegated powers route is to be followed.

### **Consideration of other matters**

391. We have considered the cause of the delay in processing the sale that arose in the summer of 2001, and the possible consequences of that delay for Mr David Stephens. Mr David Stephens had direct dealings with Mr Alan Williams, the Leader and with the Football Club directors over the freehold disposal. He knew the political pressure to retain the Club in the Borough and he was aware of the history of failing to deliver previous options. He had a grasp of the principles of s123 Local Government Act 1972 and the need to secure best consideration. He also knew that he was subject to very limited supervision and check. A failure to action the sale of the freehold when it was supported by Mr Alan Williams, the Leader, would expose him to criticism from a politician who we have been told had a reputation of being forceful. The Club's chairman was likely to be equally vocal.
392. Mr David Stephens also knew that he was subject to few internal checks and little effective management. Despite this, he did not act on the outputs of those systems that should have protected the Council from losses due to error. Awareness of any statement that the Borough Solicitor was concerned that the claw back arrangements were complicated, would have raised the issue in the eyes of Mr Paul Chadwick and Councillor Danish Chopra in the final stages of the DPR approval, and might have averted the loss.
393. Mr David Stephens made mistakes in drawing up the DPR. The mistake in misplacing the brackets was not easy to spot and, in itself, appears to be a simple error. However, the Council's safeguards in respect of DPRs involve the review of documentation by senior officers. No one in the Council spotted the error in the brackets until the sale had been effected. Mr Jeff Lustig's queries were left unanswered and apparently unconsidered

### **Determination**

394. Applying our tests we have concluded that the loss that arose to the Council resulted, at least in part, from the actions of Mr David Stephens. We consider that his actions amount to misconduct. However, we do not believe that misconduct was either wilful or the result of reckless indifference. We do not propose to take any action against Mr David Stephens under s18 Audit Commission Act 1998.

### **Statement of Reasons**

*Did a loss result from Mr David Stephens' activities?*

395. We believe that the loss resulted, at least in part, from Mr David Stephens' actions. Our reasoning for this is:
- a) We consider that Mr David Stephens had primary responsibility among all of the Council's officers for the transaction. He conducted the majority of the negotiations, and was also responsible for developing the structure of the transaction

- b) While we have been unable to conclude on who decided to employ the DPR route, once that decision had been taken Mr David Stephens' evidence suggests that he was responsible for drafting the DPR and obtaining the necessary comments and approvals.

*Is there evidence of misconduct that caused the loss?*

396. We conclude that Mr David Stephens' actions and omissions fell significantly below the standard we would have expected of an officer in his position and therefore that they amount to misconduct. We do not consider that the drafting error within the contract of itself constitutes misconduct. However, we believe the procedural failures such as representing Mr Jeff Lustig as having made no comments when in fact he had expressed concerns, and failing to pursue Councillor Danish Chopra's request to ensure the Leader was content do amount to conduct significantly below standard.

397. Our conclusion is also based on:

- a) For reasons that he assigned to pressure of work, progress on the sale of the freehold lay dormant from July 2001 to early November 2001. Mr David Stephens was prompted to move it forward in November, although who was involved is not wholly clear. He had drawn up the DPR in July and, in our view, he should have been aware that there were comments on the DPR to resolve. Mr David Stephens claims that he overlooked these important comments from Mr Jeff Lustig. We note that in order to resolve the queries, he would have needed to have spent more time speaking to the Club and revisiting the wording of the DPR. He would then have had to re-circulate the DPR to the statutory officers; this would have created further delay and exacerbated the potential criticisms of his apparently dilatory performance.
- b) Later in the process, Mr David Stephens had another opportunity to review the terms of the claw back when Mr Steven Strange sought clarification of the clauses giving effect to the requirements as set out in the DPR. The legal contracts for the disposal are not so complicated that upon reading through, the drafting error would not have become apparent to an informed reader. Based on the information before us, a review of these documents as a whole by such a person would have highlighted the error in drafting. It therefore follows that Mr David Stephens either did not elect to read through the draft sale contracts or alternatively he scan read it without due care and attention. Although he has informed us that he was working under considerable pressure at the time, we do not consider that this was a sufficient reason to omit an appropriate review.
- c) As well as overlooking Mr Jeff Lustig's comments we find every reason to believe he also took no action to follow Councillor Chopra's wishes by confirming that the then Leader, Mr Alan Williams, was content for the disposal to proceed.

*Was the misconduct deliberate or the result of reckless indifference?*

398. If we are to reach a finding of wilful misconduct against Mr David Stephens under s18, we need also to be able to show that his actions were either deliberate or were reckless. We do not believe there is sufficient proof that he acted in a manner that can conclusively be shown to be either. We have no clear evidence that having overlooked the matter for some period, he sought to expedite it in order to escape criticism. There is no doubt that in so doing important steps were not undertaken. On the other hand, there is no suspicion of personal monetary gain. Further, we accept that he was working under pressure with only limited resources. While Mr David Stephens' claim of a lapse of memory may be convenient, we can not prove it amounts to more than that. On balance, we have insufficient evidence to demonstrate that his actions were either deliberate or reckless.



## Mr Jeff Lustig

399. Mr Jeff Lustig had been employed as a solicitor by Barnet for many years, having first been appointed in 1983. He became Acting Borough Solicitor and Acting Monitoring Officer at the end of May 2001 and Borough Solicitor and Monitoring Officer on 10 September 2001.

### Mr Jeff Lustig's role

400. In May 2001, Mr Jeff Lustig became responsible for giving legal advice to members and fellow officers. Within the Borough Solicitor's department, which was styled the Law and Probity Service, he had a team of just over 30 lawyers, being a mixture of solicitors, barristers, legal executives and some un-admitted staff who carry out legal advice and case work. There was also a support team of administrative and secretarial staff. Mr Jeff Lustig had responsibility for electoral registration, local land charges, registrars of births, marriages and deaths, democratic services which was committee related, the scrutiny team, the mayor and member support team, facilities, management of the town hall, corporate anti-fraud team and the CCTV and emergency services team.

401. The position of Monitoring Officer was established by s5 (2) Local Government and Housing Act 1989. That section requires every Council to establish a post of Monitoring Officer, whose duties are, inter alia, to report on any proposal that appears to be likely to give rise to a contravention of any enactment.

402. We have received representations for Mr Jeff Lustig that explain his duties at the time were restricted to being consulted on a draft DPR, and that he did not see the final DPR. He was not, and was not required to be, further involved. The representation notes that '*It is the case that Jeff Lustig had every reason to believe and did believe that the decision making process was in accordance with the Council's constitution and that the sale was lawful.*' (Document 378 page 25)

### His actions

403. Mr Jeff Lustig had some sporadic involvement with matters relating to the Club over the years. He gave advice in connection with the Cophall proposal. The legal team was involved with the planning inquiry for Cophall. Legal issues would arise from time to time, officers with property responsibilities or the planners would ask for some specific advice and advice would be given with no further ongoing involvement from the legal team.

404. As far as the disposal of the Underhill freehold was concerned, the first development was the receipt of the draft Cabinet report from Mr David Stephens on 2 July 2001. Mr Jeff Lustig responded in an email dated 17 July 2001 stating that '*My only comment is that perhaps some reference should be made about the Council getting a share of the proceeds from a sale of part of the site.*' (Document 122). The next development noted was when Mr David Stephens circulated the draft DPR document on 23 July 2001 for comment to the statutory officers, being Mr Leo Boland (Chief Executive), Mr Jeff Lustig (Borough Solicitor) and Mr Jeremy Jaroszek (Strategic Director) (Document 237 Appendix 29).

405. Mr Jeff Lustig responded to that email on 30 August 2001 and he made a number of comments:

*'I understand that the thrust of the proposed on-sale provisions, but I think we need to be careful not to over complicate them because we might miss a trick that way. Are these not the key provisions:*

*Barnet FC is allowed to play at Underhill for at least 10 years unless it finds and moves to another facility during this period*

*Unless Barnet FC has relocated to another suitable ground within the Borough and the holding company or its successor in title has provided and developed or will provide and develop that other ground, then on any sale of Underhill the sale proceeds division provisions will apply.*

*We particularly have to be careful to ensure that, under the agreement, the holding company can't avoid the sharing arrangement by effectively transferring the development value before Barnet FC relocated out of the Borough.'*

406. He did not receive a reply to this email. In his discussion with the auditor, Mr Jeff Lustig made the following comments:

*'What generally happens now, for instance if I'm consulted on a report, if I'm satisfied with the report, all the consultation now is invariably done by email, I will send an email back saying, 'Cleared' or 'Okay' or 'I'm satisfied with the report'. I don't physically sign the report. In this particular case I didn't do that because I wasn't satisfied with the wording of the report, not specifically in my monitoring officer role, but in my role as borough solicitor or the lawyer giving advice, because I didn't feel that the terms were being expressed with the appropriate clarity. In those circumstances I would have expected (a response) because in every other case I can think of where I've made comments on draft reports – we're talking about 20 years or more – there's always been a response. This is the single occasion where it didn't happen.'* (Document 320, page 18)

407. Following a lengthy delay Mr David Stephens subsequently advised the Football Club by email on 9 November 2001 that *'the report has been passed to Legal for them to start the necessary work.'* (Document 150). He asked for details of the Club's solicitors. The request for legal documentation to be prepared was passed to Ms Alberta Owusa-Tevie, Chief Solicitor, who in turn passed it to Ms Philomena Jemide, Team Manager – Projects Team, who allocated the work to Mr Steven Strange, Principal Solicitor. Mr Steven Strange received details of the DPR on 28 November 2001 and completed the legal documentation in conjunction with Mr David Stephens. Mr Jeff Lustig had no direct involvement in this process.

408. In his interview with the auditor in relation to the error Mr Jeff Lustig said at page 27:

*'I wish that I had noticed it, obviously. It was brought to my attention by Graham Beattie, Director of Environment, who had come to see me; I think that it was in May or June 2002. I can't be sure of the exact date, but I think it was around about that time. He asked if he could have a copy of the transfer documentation. I supplied it to him and he came back to me and said, 'I think there's been a mistake'. That's when I looked at it and we discussed it, and I realised he was right.'*

409. Mr Jeff Lustig informed us that he signed the contract and witnessed the seal of the overage deed.

*'I'm authorised by the constitution to sign contracts on behalf of the Council, and I'm authorised under the constitution to witness the fixing of the Council seal with the Mayor, the Deputy Mayor, or Mr Alan Williams, the Leader. Well, obviously it is a significant responsibility, and we do go through the documentation before we sign it, but, given the volume of it, and sometimes the size and complexity of the documentation, we are reliant on my staff to assure me that the documentation is in order. As an example, sometimes we are required to sign contracts that will constitute three or four folders like these. The people have been working on them for months and months and months and have huge familiarity with the technical detail. Whilst we did obviously take the responsibility very seriously, it would be completely impossible for me to go through the contracts and transfers with the sort of depth that my own lawyers have gone through. We would have to set aside probably the whole week to do that.'* (Ibid, page 27)

#### **Points raised by the Objectors**

410. We have to consider two objections that allege Mr Jeff Lustig caused the Council losses as a consequence of wilful misconduct. The objections by Mr David Miller and Mr Andrew Markey are in the same terms and raise the same issues. The arguments in support of the objections are repeated below for completeness.

- a) Jeff Lustig told the Land at Underhill Inquiry that he considered the deal was getting too complicated.
- b) If so, why did he allow a legal assistant to draw up the draft contract and not check it?
- c) The Delegated Powers Report states that sale had to be in a form to Jeff Lustig's approval.
- d) Did Jeff Lustig approve the contract? If not, why not?
- e) Why did Jeff Lustig not notice the typographical error? Others may have had an excuse, but not

*the Borough Solicitor.*

*f) Even if Jeff Lustig did not notice typographical error, why did he allow the resultant ten year cap as clearly stated in the Contract? (Clause 7, Overage Payment Deed)*

*g) Why did Jeff Lustig allow a contract to be drawn up that ignored the covenants contained in the original lease?*

*h) Why did Jeff Lustig allow someone else to sign off the Delegated Powers Report in his name?*

*Much has been made of the typographical error in the Delegated Powers Report. Whilst it may have been negligent for Jeff Lustig not to have noticed the error, the consequence of this mistake was to introduce a ten year 'cap' into the draft contract which would have been clearly understood by him.*

*Jeff Lustig was aware that the Chief Valuer's valuation was calculated on the basis that there would be a claw back if the land was sold for development. However, Jeff Lustig knew that the Delegated Powers Report allowed for BFCH to keep 100% of the proceeds of the sale of Underhill if a new stadium was built within the Borough.*

*It is not credible to suggest that Jeff Lustig did not realise this could not possibly comply with section 123 of the Local Government Act 1972, especially as e-mail evidence shows that he and the Chief Valuer had discussed this aspect at length.*

*Given that the Contract had to be drawn up in a form to Jeff Lustig's approval, the only possible conclusion is that Jeff Lustig knowingly allowed it to be signed off in its final form when he had ample opportunity to amend the details. Whether he was under pressure from certain individuals or merely a heavy workload is irrelevant. Jeff Lustig allowed the sale to proceed on terms knowing that they could not possibly comply with the law. As Borough Solicitor, it was within his power to prevent the sale from taking place.*

*Jeff Lustig was aware of the length of the unexpired lease to BFC.*

*As Borough Solicitor, Jeff Lustig must have been aware that the Council's Constitution prohibits Officers from dealing with land sales under delegated powers where the length of the lease is more than 30 years.*

*Jeff Lustig was therefore aware that the Delegated Powers Report must have been ultra vires.*

*By allowing the sale to proceed via the Delegated Powers Report route instead of insisting that a report be sent to Cabinet, **Jeff Lustig knowingly permitted a course of action to be pursued which he knew to be wrong.***

*Whilst the current objection relates to the sale of Underhill in March 2002, it is relevant to consider subsequent action taken by Jeff Lustig after the new Administration decided to pursue a legal action against BFCH. The Council's case was prepared by the Borough's legal department, despite the obvious conflict of interest.*

*Why did Jeff Lustig pursue the wrong legal case – i.e. rectification of contract when he knew that this made no difference to the 100% option?*

*Why did Jeff Lustig pursue a section 123 argument in Court when he should have known that the Club could (and did) use section 128 as a defence?*

*Why didn't Jeff Lustig give evidence at Court? Defence counsel refers to this. Was it because he did read the Overage Deed, understood the cut-off period, and did not want to state this in court?*

*Did Jeff Lustig properly brief the Barrister vis-à-vis the Constitutional irregularities and that there was no legal authority for the sale?*

*If the Court case had been successful, this would have proved that the Officers were complicit in an unlawful act. It was therefore not in the interest of Officers for the case to succeed.*

*It is clear from comments made by the Judge, that a different action might have been more successful.*

*The Borough Solicitor admitted to me in an e-mail that even if the High Court case had been successful, BFCH would still have been able to sell the land and keep 100% of the revenue. Pursuing a case for rectification therefore had no purpose.*

*The erroneous bracket, and the failure to notice it, could be considered merely negligent. But there were far too many other 'errors' by Jeff Lustig and others for them all to be considered negligent. A reasonable person, when availed of all the facts, would be bound to conclude that the terms of the sale were deliberate.*

411. Mr David Miller made additional representations to us in a letter of 14 August 2006. (*Document 397*). His argument is that Mr Jeff Lustig should have been further involved. He says that if it is accepted Mr Jeff Lustig was not further involved in the disposal after expressing his comments on the DPR, other than executing the documents, it would amount to 'a *dereliction of duty* (that) *goes beyond negligence*.' Mr Mike Dawson, in a letter of the same date, (*Document 399*) notes that the DPR format included sections for recording the observations of the Monitoring Officer, and contends that Mr Jeff Lustig was required to comment on the final DPR by the Council's constitution.

### **Consideration**

412. We have considered all of the matters raised by the objectors, and we have considered whether there are any further issues we should address. We believe the principal matter before us is the manner in which Mr Jeff Lustig undertook his responsibilities. We have to consider whether he the Council has suffered a loss; if so whether that loss was caused by him doing something wrong, and if so whether he knew his conduct was wrong, or was recklessly indifferent as to whether it was right or wrong.
413. The objectors expect a high standard of performance and expectation from the Borough Solicitor. In the introduction to the objection against Mr Jeff Lustig, the objectors state:

*'The erroneous bracket, and the failure to notice it, could be considered to be merely negligent. But there were far too many other 'errors' by JL and others for them all to be considered negligent. A reasonable person, when availed of all the facts, would be bound to conclude that the terms of the sale were deliberate.'*

414. Mr Jeff Lustig did criticise the DPR and expressed his reservations in an email to Mr David Stephens. However, the error in the brackets was not spotted until June 2002 and then by Mr Graham Beattie. It was unfortunate that internal procedures were weak and that no system was in place to ensure that Mr Jeff Lustig's previous comments, and those of the other commentators on a DPR were dealt with and drawn where necessary to the attention of the ultimate signatories. Furthermore, the actions of Mr David Stephens did not assist when he misrepresented Mr Jeff Lustig's position on the final version of the DPR that was signed off by Mr Paul Chadwick.
415. We have considered representations on behalf of Mr Jeff Lustig (*Document 378*) to the effect that he is not to be criticised for the incorrect drafting of the contract documentation, as that was dealt with by a separate team. It is also contended that it is unrealistic to regard him as under a duty to follow up his comments on the draft DPR, since that was not the role of the Borough Solicitor. We accept that no senior officer can review all of the work of all his or her staff, and we also accept that Mr Jeff Lustig had a considerable volume of matters to deal with. Nevertheless, our view is that this was a complex and high profile matter, and that it would be reasonable to expect Mr Jeff Lustig to have made himself aware of the structure of the eventual contract.
416. The question arises whether he might have been more diligent in other areas. The standard we have used is the one we would expect of an individual with Mr Jeff Lustig's experience and in his position, with the information available to him. While we accept that Mr Jeff Lustig did not have any valuation expertise, we take the view that he might have raised other questions. For instance he did not question whether:
- a) The total consideration was less than the £100,000 limit for the use of the DPR route referred to in the constitution. The cash sum involved was under £100,000 but the value of the total consideration is not clear. It cannot be judged from the DPR as no assessment is made of the commercial value of the potential development value clause. Mr Jeff Lustig might have been expected to query the basis on which the consideration had been established, if only to ensure that the process was constitutionally sound.
  - b) The sale gave rise to a number of monetary benefits to the football club. Firstly, it relieved the Club from covenants contained with the original lease. Mr Jeff Lustig might have questioned if these arrangements had been considered. Second, and more importantly, the Council's share of any development gain for the first ten years of the agreement in respect of sale was being foregone if it were invested in a new stadium in the Borough. There is no evidence to show whether the appropriateness of the Council foregoing capital receipts was considered. It does not appear to us that Mr Jeff Lustig considered whether so doing was compatible with the requirements of s123 (2) to obtain best consideration, a matter which a Borough Solicitor and Monitoring Officer should have considered.
417. The other points made by the objectors are:
- a) *He knew that the deal was getting too complicated.* He did alert Mr David Stephens who chose not to take action on the points raised.
  - b) *Why did he allow a legal assistant to draw up the contract and not check it?* The arrangements in the Borough Solicitor's department allow work to be delegated and checked by line management. The procedures within the department did not allow the Principal Solicitors working on the draft contracts to be aware that the Borough Solicitor's comments had not been dealt with in the finalised DPR.
  - c) *The DPR said that contractual documents had to be in a form that was approved of by the Borough Solicitor.* Paragraph 4.1 of the DPR states that the contract is to be in a form that is acceptable to the Borough Solicitor. The interpretation adopted was that this meant the contract should be in a form acceptable to the Borough Solicitor's department rather than to Mr Jeff Lustig personally. We accept that in practice Mr Jeff Lustig can not be expected to undertake or to review all of the work of his department.

- d) *Did Jeff Lustig approve the contract?* The contract was prepared by the Borough Solicitor's department and not the Borough Solicitor himself. The Borough Solicitor did not check the document but relied on the line managers within the department.
- e) *The sale was in breach of the constitutional requirements for a DPR as it was in respect of a lease with over 30 years to run.* This transaction was for the disposal of the Council's freehold in the stadium. Consequently the prohibition by the constitution of the use of a DPR for the purchase or disposal of a lease for a period of more than 30 years is not relevant.
- f) *The basis of the legal case put for the rectification of the sale agreements was fundamentally flawed.* These are matters for the 2002/3 audit and not matters that can be considered as part of the audit of 2001/2 accounts.

### **Consideration of other matters**

- 418. We consider that Mr Jeff Lustig made some astute points in reviewing the DPR. He identified flaws in the draft DPR which he drew to the attention of Mr David Stephens. We believe that Mr Jeff Lustig expected Mr David Stephens to consider his points and develop a revised draft but no response was received. Mr Jeff Lustig's office had no procedure to ensure that responses were received.
- 419. Mr Lustig advised the auditor that he could not recall any other instance where no response has been received to a query in respect of a DPR. He did not expect that Mr David Stephens would ignore his reservations and prepare a draft DPR for approval by Mr Paul Chadwick and Councillor Danish Chopra showing that the Monitoring Officers comments as none. We note that he and the other senior officers had a high level of trust in the Chief Valuer.
- 420. The Borough Solicitor's department received the instruction from Mr David Stephens in the form of the approved DPR. They acted on it in the usual manner as a normal routine disposal, which did not call for Mr Jeff Lustig's personal attention.
- 421. Mr Jeff Lustig or members of his department might also have questioned other aspects of the transaction such as the foregoing of potential future income if it were invested in a football ground. there is no evidence that they did so, and we believe they should have done.

### **Determination**

- 422. Applying our tests we have concluded that the loss the Council incurred did not result from the actions of Mr Jeff Lustig. We do not therefore propose to take any action against Mr Jeff Lustig under s18 Audit Commission Act 1998.

### **Statement of Reasons**

*Did a loss result from Mr Jeff Lustig's activities?*

- 423. The loss that arose to the Council did not result from the actions of Mr Jeff Lustig. We consider that the loss did arise from a poorly drafted contract which had been drawn up in the Borough Solicitor's department. However it was not drawn up by Mr Jeff Lustig personally, and neither could it reasonably have been expected to be. The Borough Solicitor did sign the sale agreements at the sealing ceremony at the end of February 2002, but we accept that this did not carry with it any responsibility to conduct a further review.

*Is there evidence of misconduct that caused the loss?*

- 424. We do not find that Mr Jeff Lustig acted in a manner that represents misconduct. We consider that:
  - a) It was not necessary or even practical for Mr Jeff Lustig to conduct all of the work required on the contract personally, particularly given his role in overseeing the legal arrangements of a large London Borough.

- b) Mr Jeff Lustig did not supervise directly the work of Mr Steven Strange who was responsible for drafting the contract
- c) He raised some significant issues in relation to the DPR, but did not pursue them when he received no response from Mr David Stephens. While we believe that he might have done so, we do not think that the omission amounts to conduct significantly below the standard we would have expected

*Was the misconduct deliberate or the result of reckless indifference?*

425. As we have found no evidence of misconduct, we do not need to consider whether his actions were deliberate or reckless.

## Mr Paul Chadwick

426. Mr Paul Chadwick was appointed as the Acting Head of Development and Regeneration following the resignation of Mr Andrew Barry-Purssell in July 2001. He was first appointed by the Council in 1997 as Chief Valuer, and he became Deputy Head of Development and Regeneration, under Mr Andrew Barry-Purssell, in late 1999.

### Mr Paul Chadwick's role

427. In his acting role Mr Paul Chadwick took over the constitutional responsibilities of the Head of Development and Regeneration. The constitution states that amongst other matters the holder of this post, in consultation with the Executive Member for Resources, has delegated authority to dispose of land, provided that the consideration is less than £100,000 plus fees. In addition he has responsibility to ensure that the Council complies with its rules on the disposal of land and property.

428. Where the Head of Regeneration exercised his delegated powers, the Council's processes required that he do so in consultation with the relevant Executive member, in this case Councillor Danish Chopra

429. Mr Paul Chadwick's post also involved the management of a significant department, which faced many pressures apart from the one under review.

### His actions

430. We know from Mr Paul Chadwick's interviews with the auditor and his statements to other enquiries that while Mr Paul Chadwick had been a colleague of Mr David Stephens for a number of years prior to November 2001, he had little direct involvement with him in relation to Underhill. In particular there were few, if any, one to one briefings.

431. Mr Paul Chadwick's main part in the disposal revolves around the delegated powers report. He has said that he had not seen the DPR before it was presented to him for signature. In his evidence to the Harbord enquiry, Mr Paul Chadwick stated that *'I suspect that I would have speed read the report, probably more than anything, looked at the conclusions, looked at the best price issues and signed it off on that broad basis'*. (Document 348). In his further interview with the auditor in January 2007, Mr Paul Chadwick added *'I would have been looking at the, kind of, headings; I would have been looking at the marriage issues, the marriage value issues, the percentage split, and whether that was ... appropriate and fair'* (Document 365, page 11)

432. To comply with the processes supporting the DPR, Mr Paul Chadwick effectively relied upon Mr David Stephens. When the DPR was presented to him he would have seen that the Head of Paid Service, the Monitoring Officer and the Borough Treasurer had all looked at the DPR and had apparently made no criticism of the planned sale. None of the officers had on the face of the DPR highlighted any errors in drafting or issues of legal or financial non-compliance. He then signed the report without comment.

### Consideration

433. Mr Paul Chadwick's actions have not been the subject of any of the objections. Nevertheless as the officer to whom delegated responsibility was assigned by the Council's constitution, it was he who effectively approved the transaction by signing the DPR. In undertaking his responsibilities, we consider that it was incumbent on him to satisfy himself of the purpose and legality of the transaction.

434. We have considered three specific matters:

- Whether Mr Paul Chadwick played a sufficient role in the disposal, given the responsibilities of his post
- The adequacy of the evidence available to him on which he relied in signing the DPR



- Whether he was justified in giving his approval

*Did Mr Paul Chadwick play a sufficient role?*

435. We noted above that Mr Paul Chadwick took little direct interest in the work of Mr David Stephens and effectively managed with a light touch, focusing on other issues. Mr David Stephens in fact told us that he could not recall when anyone within the Council had questioned his valuations. (*Document 350, page 46*)
436. Mr Paul Chadwick took up his post in July 2001 when the negotiations with the Club were already well advanced and the form of the final agreement was already almost complete. It was in July for example, that it was settled that the period in which the Council would continue to share a proportion of some future receipts would be 10 years.
437. In these circumstances Mr Paul Chadwick has informed us that he did not seek to play a greater role in the disposal of Underhill during the autumn of 2001. In his interview with the auditor, in answer to the question about the DPR 'What process entered your mind when you got the document?', Mr Paul Chadwick replied '*I just signed it as I had been advised to as it had been seen by the Borough Solicitor.*' (*Document 324, page 5*) In subsequent interviews, Mr Paul Chadwick has explained that he believes he would have reviewed the key points, although the passage of time makes it difficult for him to be precise.
438. He might have been more rigorous in his enquiries when he was required to sign the delegated powers report in his own name. The political sensitivity of the issue would by that time have been clearer to him, given the involvement of the Leader and the profile that football matters enjoy. Further, at that point the press was reporting the planning application for the South Underhill site. In addition, it might well have struck him as odd that the DPR route was being adopted.
439. When Mr Paul Chadwick was asked to approve the DPR on 13 November 2001, he would have seen that all three of the statutory officers had already commented that they were content. However, while there was no direct evidence to him that any had any misgivings, he took no steps to obtain positive assurances.

*The adequacy of the available evidence*

440. Mr Paul Chadwick had to consider a report (*Document 153*) which had the purpose, in the words of its summary, of being 'to approve the sale of the freehold interest in the Underhill Stadium to a holding company on behalf of the Club subject to safeguards for the Club having future use of the stadium and to the Council sharing in any future development value'.
441. The report concludes that the terms negotiated will achieve the following:
- *Realises (sic) a price for the freehold which reflects the current lease and the annual income*
  - *Ensures that Barnet FC can continue playing at the ground*
  - *Provides the Council with a proper share of any future development value if the Underhill stadium is sold and Barnet FC no longer plays in the Borough*

As the arrangements will assist the Club with sorting out its future, I recommend that the freehold sale be approved.

442. We have already noted that it is not clear how the sale of the freehold to the Company would assist the Club, or why the transaction was in the Council's interests.

443. It is not apparent that Mr Paul Chadwick had any first hand knowledge of the scheme. On the other hand the report contains provision for observations from the Monitoring Officer, the Head of Paid Service and the Borough Treasurer, and none raised any points. There are also several paragraphs of explanation of the safeguards referred to in the summary, and a short note confirming that the requirements of s123 have been met. Finally, the Cabinet member had no comments.

*Was Mr Paul Chadwick justified in giving approval?*

444. During his interviews on 19 May 2006 and 22 January 2007 (*Documents 324 and 365*) Mr Paul Chadwick laid stress on a number of factors that relate to the manner in which he gave his approval. In particular, he noted that:
445. When he received the DPR it had already gained the approval of the Chief Executive, the Finance Director and the Borough Solicitor. He was aware that all had significant prior involvement with the case, and they were experienced in ensuring that proposed actions were consistent with policy. He was also aware of the importance of the case and the priority that senior officers and members were giving it.
446. Mr Paul Chadwick emphasises that whilst he was the officer with delegated powers, giving a delegated decision is just one part of the process and that others should also bear responsibility for ensuring their actions are reasonable and professional. As a consequence Mr Paul Chadwick is strongly of the view that his actions were reasonable.
447. Owing to the passage of time, Mr Paul Chadwick tells us he can not recollect the precise nature of the steps he took to consider the valuation advice, including the work of Mr David Stephens, but believes he would have looked to see whether the main headings were appropriate and fair. Since Mr Paul Chadwick occupied a Chief Officer's post and was remunerated accordingly, we consider it appropriate to judge him against the standard of behaviour reasonably to be expected for a Chief Officer. We do not accept that in this instance the steps taken by Mr Paul Chadwick were clearly sufficient; he did not for example note that the comments made by the Borough Solicitor had not been acted on.

**Determination**

448. Applying our tests we have concluded that the loss that arose to the Council resulted from the DPR that was approved by Mr Paul Chadwick. However, we do not consider that his actions amount to misconduct. We do not therefore propose to take any action against Mr Paul Chadwick under s18 Audit Commission Act 1998.

**Statement of Reasons**

*Did a loss result from Mr Paul Chadwick's activities?*

449. The loss that arose to the Council did result from the actions of Mr Paul Chadwick as it was he who formally authorised the disposal of the freehold.

*Is there evidence of misconduct that caused the loss?*

450. We are of the view that Mr Paul Chadwick's failure to consider the matter more fully does not constitute conduct significantly below the standard that might reasonably have been expected of him, and thus that it does not amount to misconduct. We consider that:
- a) Mr Paul Chadwick was entitled to take comfort from the apparent lack of concern on the part of the three senior officers of the authority who had commented on the DPR before it was presented to him for signature
  - b) It was not unreasonable for him to place reliance on the work of Mr David Stephens, given Mr David Stephens' long-standing involvement.

*Was the misconduct deliberate or the result of reckless indifference?*

451. As we have found no evidence of misconduct, we do not need to consider whether Mr Paul Chadwick's actions were deliberate or reckless.

# Section 8 – Our Conclusions under s8 Audit Commission Act 1998

## **Request for a public interest report to be issued**

452. We have to consider issues raised by Mr Andrew Markey and whether we are to issue a public interest report. In his letter dated 17 May 2004 (*Document 308*) Mr Andrew Markey raised a number of issues which can be summarised as:

- Criminal intent to deceive and defraud
- An illegal disposal of a substantial freehold
- Deliberate price-fixing, at a fraction of what it should have been
- A resulting loss of over £5 million suffered unnecessarily by Barnet tax-payers
- A sale to a private, non-trading company with only one shareholder
- Constitutional abuse
- Democratic abuse
- Collusion to cover-up, which seems to be continuing
- A material failing in the internal control of the Council
- Inaccurate and misleading disclosure in the accounts

453. We have also received representations from Mr David Miller urging us to issue a public interest report on the grounds that it *'may be the only way to force the Council to recognise its failings and its requirement to be democratically accountable at all times.'* (*Document 401*)

454. In our view it is important to be clear as to the interests of the public in issuing a report. Such interests may include, inter alia:

- Our conclusions on the legality of the transaction
- Any failures on the part of the Council that led or may have led it to suffer loss
- The responsibility of individuals for such loss
- The changes that the Council might make to minimise the likelihood of repetition

455. We have concluded that:

- There is a public interest in the conclusions that we have reached
- We have addressed many of the objector's representations within the body of the report above
- We have made several recommendations concerning systems, processes and controls that we believe the Council should consider, if it has not already done so

456. We have received assurances that the Council will regard this statement as a public document, and will consider and respond to our recommendations at a public meeting.

457. As a consequence, and after taking into account the factors above, we have determined that there would be no further public interest to be gained from making a further report to the Council formally under s8, six years after the date of the relevant transaction. This position is dependent upon the Council's consideration of and response to this report.

### **Recommendations**

458. By way of summary our recommendations to the Council are:

a) Delegated Powers Reports

The Council should reconsider the process through which it determines whether it is appropriate to employ a delegated powers route in any particular case.

b) Publicity for Delegated Powers Reports

The Council should review its procedures for publicising the use made of delegated powers reports to ensure that they now provide an appropriate level of accountability and transparency.

c) Use of the Council's seal

The Council should consider including provisions in its constitution so that in those instances where either the Mayor or Deputy Mayor has declared any form of interest in any transaction he or she is not involved in the use of the Council seal at any subsequent stage of that transaction

d) Retention of records

The records of members and officers generated whilst in office and pertaining to Council business, should be retained for an appropriate period commonly applied by statute (six years).

e) Monitoring of performance

Consideration should be given to improved monitoring of performance by members and officers, to ensure that individuals have the appropriate capacity to discharge their responsibilities effectively.

Issues raised in the Harbord report

459. The Council should also consider and confirm that it has addressed the following recommendations made in the Harbord report:

- i) The Council needs to ensure that all officers involved in the decision making process are aware of the procedures to be followed under the Constitution
  
- ii) It should be made clear to all staff that ignoring decision making procedures or statutory officers' comments will be regarded seriously
  
- iii) The statutory officers need to consider the kind of comments they make on reports
  
- iv) Draft reports should set out all relevant information and be clear about implications
  
- v) The Council may wish to review its procedures for ensuring that the Leader or appropriate Cabinet members are fully advised of the implications of decisions
  
- vi) The Council may wish to review its procedures ..including the greater use of independent valuations..to ensure it maximises the income arising from the sale of assets

# Appendix 1: Document references

Document Reference	Date	Brief Description
1	20.08.86	Lease between LBB and BFC
3	05.03.98	Press Release
4	18.09.98	Letter from LBB in response to BFC's concerns
6	24.09.98	Letter from Mr Max Caller to Mr Tony Kleanthous
15	26.07.99	Letter from Mr Alan Williams in response to residents questions
21	25.01.00	Letter from Mr Alan Williams
31	18.05.00	Letter from Mr Max Caller re: key issues surrounding the future location of BFC
32	08.06.00	E-mail from Mr David Stephens to Mr Jeff Lustig
34	09.06.00	Covering e-mail from Mr David Stephens enclosing attachments to BFC with the terms for granting consent for the assignment of the lease to a holding company
35	09.06.00	E-mail from Mr David Stephens to Mr Jeff Lustig
38	01.07.00	Barnet UDP Deposit draft 2000
53	21.09.00	Meeting notes
54	25.09.00	Letter from BFC (Mr Tony Kleanthous) to Mr Alan Williams
57	08.10.00	E-mail from Mr David Stephens to Mr Andrew Barry-Purssell
58	17.10.00	Memo from Mr Andrew Barry-Purssell
63	27.11.00	E-mail from Mr David Stephens to Ms Rosemary Coates
64	27.11.00	E-mail from Mr Jeff Lustig to Mr Tony Vincent
68	08.01.01	Minutes of meeting discussing BFC in relation to the Scouts
72	16.01.01	Briefing note update on discussions with BFC, St Johns Ambulance and the Scouts
73	17.01.01	E-mail from Mr Alan Williams to Ms Rosemary Coates
75	07.02.01	Letter from Mr Alan Williams regarding the future of the club
76	16.02.01	Letter from Mr Graham Slyper outlining the problems with the negotiations

<b>Document Reference</b>	<b>Date</b>	<b>Brief Description</b>
77	21.02.01	E-mail from Ms Penny Filtness to Mr Jeff Lustig re: status update
79	22.02.01	E-mail from Mr Jeff Lustig re: section 2 of the Local Government Act
80	22.02.01	Briefing note from Mr Andrew Barry-Purssell re: update on BFC
82	27.02.01	Minutes of the meeting of the Strategic Directors
84	06.03.01	Letter from Mr Graham Slyper re: potential relocation of BFC
85	14.03.01	Letter from Mr Alan Williams re: continual search for alternatives for BFC
86	20.03.01	Letter from Ms Anne Lippitt re: revised draft UDP – reference of discussion
87	21.03.01	E-mail from Mr Graham Slyper to Mr David Stephens
92	16.04.01	Barnet FC Issues
95	21.05.01	Cabinet Members - delegation
99	30.05.01	Briefing note from Mr David Stephens re: BFC – Stadium at Underhill
112	02.07.01	E-mail from Mr Graham Slyper to Mr David Stephens
113	02.07.01	E-mail from Mr David Stephens to Mr Graham Slyper
118	04.07.01	E-mail from Mr Danish Chopra to Mr David Stephens
119	16.07.01	Draft Cabinet Report (various versions)
120	16.07.01	Draft Cabinet Report (various versions)
122	17.07.01	E-mail from Kasum Shah to Mr David Stephens with a comment in relation to the draft cabinet report
123	18.07.01	E-mail from Mr Graham Slyper to Mr David Stephens
126	23.07.01	E-mail from Mr David Stephens requesting comments on draft DPR
127	23.07.01	E-mail from Mr David Stephens regarding BFC and the DPR
130	08.08.01	E-mail from Mr Jeff Lustig re: intranet for DPR's
135	30.08.01	E-mail from Mr Jeff Lustig to legal team
141	01.10.01	Constitution 2001 – Article 13
143	04.10.01	E-mail from Councillors re: request for meeting to discuss BFC
144	16.10.01	Notification of application for planning permission
145	18.10.01	Memo from Mr Andrew Smith to Mr David Stephens
146	25.10.01	Briefing note with planning application by BFC for new stadium at Underhill
147	26.10.01	Memo from Mr David Stephens to Mr Danish Chopra requesting comments on the DPR
149	08.11.01	Press Article
150	9.11.01	E-mail from Mr David Stephens confirming the report has been passed to legal
151	10.11.01	E-mail from Ms Valerie Welch on behalf of Mr Graham Beattie re: clarification of the freehold sale and planning application



<b>Document Reference</b>	<b>Date</b>	<b>Brief Description</b>
152	12.11.01	E-mail from Mr Graham Slyper seeking clarification
153	13.11.01	Delegated Powers Report – signed copy
156	27.11.01	E-mail from Ms Rosemary Manning re: meeting with BFC and Barnet Cricket Club
174	11.01.02	Comments from Steven Strange to Mr Good relating to Clause 13 of the draft contract
205	27.02.02	Decision of the Planning and Environment Committee
211	27.03.02	Overage Payment Deed between LBB and BFCH
228	07.06.02	E-mail from Mr Jeff Lustig re: DPR decision and BFC
237	01.09.02	Background to freehold disposal (full report including all appendices)
280	13.02.04	High Court approved Judgement
284	30.07.04	Appeal Court Judgement
287	04.01.05	Report from Mr Alan Williams to approve action plan agreed by Cabinet
298	07.06.05	Memo from Mr David Stephens re: BFC Ltd/Italian Sports Design Limited
318	14.02.06	Transcript of interview with Mr Leo Boland
319	16.03.06	Transcript of interview with Mr Clive Medlam
320	21.03.06	Transcript of interview with Mr Jeff Lustig
321	22.03.06	Transcript of interview with Mrs Anita Campbell
322	27.03.06	Transcript of interview with Mr Alan Williams
323	30.06.06	Transcript of interview with Mr Tony Kleanthous
324	19.05.06	Transcript of interview with Mr Paul Chadwick
325	08.02.06	Transcript of interview with Mr David Stephens
341	Undated	Land at Underhill Enquiry
356	Undated	Extract from Part 3 of Constitution – Responsibility for Executive Functions
144	16.10.06 & 19.10.05	Notification of application for planning permission and Planning application by BFC for new stadium at Underhill - Draft
150/161	09.11.01 & 30.11.01	Confirmation that the report has been passed to legal and e-mail advising that the draft will be available by 12.12.01
365	22.1.07	Transcript of interview with Mr Paul Chadwick
368	2.2.06	Representations on behalf of Cllrs Anita Campbell, Danish Chopra and Mr Alan Williams
369	20.3.06	Representations on behalf of Cllr Danish Chopra

London Borough of Barnet – Conclusions and Statement of Reasons  
The Disposal of the Council's freehold interest in the Underhill stadium

371	26.4.06	Draft report from Savills
373	7.6.06	Comment from Savills on valuation matters
378	30.6.06	Representations on behalf of Mr Leo Boland, Mr Jeff Lustig and Mr Clive Medlam
379	26.7.06	Comments on representations made by Mr Leo Bolam, Mr Jeff Lustig and Mr Clive Medlam
380	26.9.06	Comments on representations made by Mr David Miller
383	19.1.07	Representations made by Mr Paul Chadwick
386	3.5.07	Representations made for Mr David Stephens
387	29.5.07	Representations made for Mr Leo Boland
398	16.1.06	Letter from Mayer Brown Rowe & Maw
397	14.8.06	Representations made by Mr Mike Dawson
400	2000/1	Job Description Questionnaire of the Chief Valuer

# Appendix 2: Key individuals

	<b>Role</b>
Mr Andrew Barry-Purssell	Head of Development and Regeneration until July 2001
Mr Graham Beattie	Acting Director of Community Development
Mr Leo Boland	Chief Executive since January 2001
Councillor Anita Campbell	Mayor at the time of the sale
Mr Paul Chadwick	Acting Head of Development and Regeneration from July 2001
Councillor Danish Chopra	Cabinet Member for Resources at the time of the sale
Ms Rita Dexter	Acting Chief Executive July – December 2000
Mr Roy Goddard	Head of Democratic Services
Mr Jerry Herring	Committee Group Leader
Mr Jeremy Jaroszek	Strategic Director of the Borough
Mr Tony Kleanthous	Chairman of Barnet Football Club
Ms Anne Lippitt	Strategic Director of the Borough
Mr Jeff Lustig	Borough Solicitor
Mr Clive Medlam	Borough Treasurer
Mr Graham Slyper	Director of Barnet FC
Mr David Stephens	Chief Valuer
Mr Steven Strange	Principal Legal Assistant
Mr Alan Williams	Leader at the time of the sale

### **Overview and Scrutiny Committees – 2007/2008 and Programme of Work for 2008/2009**

The Constitution of the Council states that Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own forward work programme and in doing so should take into account wishes of Members on that committee who are not members of the political group or groups forming the administration. It is a requirement of the Constitution that these work programmes be submitted to the Council for approval.

#### **2007/08**

The 2007/08 programme was approved by the Council on 11 September 2007.

Some of the key highlights of the programme are set out below:

#### **First Class Education and Children**

- School Admission Arrangements
- The Future Direction of Library Services and Radio-Frequency Identification (RFID) self-service systems for libraries
- Summary of Ofsted inspections
- On-going monitoring of the Council's children's residential settings; a crucial area of work

#### **Cleaner, Greener, Transport and Development**

- The White Paper 'Planning for a Sustainable Future'
- A review of the quality of decisions at Planning Committees
- A review of the protection of trees in the Borough
- In response to a request by Council an urgent investigation of the Post Office's performance in the Borough; the effects of proposed Sub Post Office closures and other methods by which the services could be provided with recommendations to Cabinet and/or Council as appropriate.

#### **Tackling Crime and Housing**

- Anti – Social Behaviour Strategy
- Safer Neighbourhoods Review
- Low Cost Affordable Housing for Temporary Tenancies
- The committee considered the work of the Community Protection Group

#### **Resources, Performance and Partnerships**

- Local Strategic Partnership (LSP)
- West of the Borough Customer Access Strategy Facility
- Customer Relationship Management

#### **Supporting the Vulnerable in our Community**

The Committee's work covers all aspects of supporting the vulnerable adults in the community. Required by stature to carry out scrutiny of the performance of the health sector, the Committee have built up excellent working relationships with partners in the health sectors, for example, the Barnet PCT, the Royal Free Hampstead NHS Trust, the Barnet, Enfield and Haringey Mental Health Trust.

- LINKs

- Darzi Review – “Healthcare for London – A Framework for Action”
- Health Impact Assessment and the Boroughs Long Term Regeneration Plans
- NHS Acute Trusts and Barnet Primary Care Trust: Substantial Variations and Health Service Developments in Barnet
- Barnet, Enfield & Haringey Clinical Strategy

**Scrutiny Commission** – on 4<sup>th</sup> March 2008, Council recommended *‘That a politically balanced working group consisting of seven Members be appointed to consider and make recommendations to the Council at their 15 July 2008 meeting on the future of the Overview and Scrutiny processes in Barnet and any issues arising from the Mycroft Group Report’.*

The Scrutiny Commission reported their findings and recommendations to Council in July 2008. Arising from the Council’s decisions a detailed report on the implementation of the Commission’s recommendations will be considered by the Special Committee (Constitution Review), for recommendation to the Council in April 2009.

### **2008/2009 programme**

Detailed in this report are the suggested work programmes for 2008/09 for the Overview and Scrutiny Committees. This does not include the Cabinet Overview and Scrutiny Committee who are responsible for scrutinising the Cabinet and other Executive Decisions as appropriate before they are implemented by means of the call- in arrangements.

The Council’s Overview & Scrutiny Committees met during June and July 2008 to discuss and agreed forward work programmes for 2008/09.; and the issues identified are appended to this item as follows:

- Supporting the Vulnerable in Our Community Overview & Scrutiny Committee- **Appendix 1**
- Tackling Crime and Housing Overview & Scrutiny Committee- **Appendix 2**
- Resources, Performance and Partnerships Overview & Scrutiny Committee- **Appendix 3**
- Cleaner, Greener, transport and Development Overview and Scrutiny Committee – **Appendix 4**
- First Class Education and Children Overview and Scrutiny Committee- **Appendix 5**

It is important to note that these programmes are reviewed throughout the year by the Overview and Scrutiny Committees. The Committees however, may need to respond to circumstances prevailing at the time. This could result in variations to the programme such as inclusions or deletions, or reprioritising the issues.

Each Overview & Scrutiny Committee may also review and scrutinise the Council’s Corporate Plan and wider performance information relevant to the committee’s terms of reference and responsibilities.

**RECOMMEND –**

**(1) That the key highlights of the 2007/08 programme be noted.**

**(2) That the work programmes for 2008/09 identified by the Council's Overview & Scrutiny Committees, with the exception of the Cabinet Overview & Scrutiny Committee, be approved.**

**SUPPORTING THE VULNERABLE IN OUR COMMUNITY OSC 2008/09 WORK PROGRAMME**

<b>ITEMS TO BE CONSIDERED</b>	<b>INFORMATION</b>
<b>Primary Care Strategy and Focus on Redevelopment of Finchley Memorial Hospital</b>	To inform the Committee about The Primary Care Strategy update and plans to redevelop Finchley Memorial Hospital.
<b>Joint Strategic Needs Assessment - Barnet Health Profile</b>	The Local Government and Public Involvement in Health Act 2007 requires PCTs and local authorities to produce a Joint Strategic Needs Assessment (JSNA) of the health and wellbeing of its local community.
<b>Key Performance Indicators 4<sup>th</sup> Quarter/End of Year 2007/08</b>	The Committee to consider issues that might arise from closer examination of end of year outturn data. As during 2007/08, the Committee will receive Q2 and Q4 information for consideration at Committee. Q1 and Q3 will be circulated outside the Committee.
<b>Supporting the Vulnerable in Our Community OSC Work Programme and Progress Schedule</b>	The Committee to consider and agree the draft work programme for 2008/09.
<b>Healthcare for London</b>	Health overview and scrutiny committees in London have been asked to schedule meetings with their respective directors of adult social services, housing (or equivalent) and the PCT Chief Executive.
<b>Adult Social Care – Annual</b>	Annual report on complaints (2008/09).

<b>Complaints Report</b>	
<b>Adult Social Care – Safeguarding Adults</b>	Annual report on safeguarding adults (2008/09). This will provide a report on key activities undertaken through partnership working. Dept. of Health guidance expects local authorities to have multi-agency procedures to ensure that vulnerable adults receive appropriate support to maintain personal dignity and for which the Council has a corporate responsibility
<b>Supporting the Vulnerable in Our Community OSC Work Programme and Progress Schedule</b>	The Committee to consider and agree the draft work programme for 2008/09.
<b>Commission for Social Care Inspection Key Achievements Against White Paper Outcomes</b>	This report will offer greater focus and more detail around what has been achieved in terms of key outcomes.



<b>A) Health</b>		
<b>NHS Acute Trusts and Barnet Primary Care Trust: Substantial Variations and Health Service Developments in Barnet</b>	<b>Standing Item</b> The Committee has an obligation to consider consultation requests from any NHS trust where there are changes to service delivery planned such as the closure or reconfiguration of a service (see below).	To be considered as and when these arise.
<b>LINKs – New network to replace PPIFs in March 2008 (carried forward from 07/08 work programme)</b>	The Committee will need to consider arrangements to facilitate dialogue and communication with LINKs members with the host, which has now been appointed.	
<b>Barnet and Chase Farm NHS Trust</b>	Maternity Services. To address issues arising from the series of reports considered by the Committee during 2007/08 and to ensure continued monitoring (see below, Maternity Services Working Group).	
<b>Annual Healthcheck 2008/09 – to consider self-declarations from each of the following trusts: Barnet Primary Care Trust Barnet and Chase Farm Hospitals NHS Trust The Royal Free Hospital NHS Trust Barnet, Enfield and Haringey Mental Health NHS Trust</b>	Annual Healthcheck 2008/09 – assessment of the trusts self declaration on compliance against Healthcare Commissions core standards. March has been set aside for the Committee to consider and comment.	<i>*March (Committee to agree meeting date) – outcome is for the Committee to provide commentary on the self-declaration, to be sent to the trust for consideration.</i>
<b>Substantial Variation and Development Matrix</b>	This is a suggested protocol which can be adopted by primary care trusts and local authorities when determining what changes to health service provision constitute a “substantial variation and development”, under the provisions of the Health and Social Care Act 2001	This will be considered at the Adult Strategy Group at its meeting in September 2008, in advance of consideration by the Committee.
<b>Young Carers Joint Working Group</b>	Following a recommendation by the Leader, the following members from the Committee have been appointed to the Working Group: Cllrs Rajput, Braun, Hart and McNeil.	To consider the impact of caring across all age groups, to consider what provision the Council currently makes and how this can be further developed.

<p><b>Maternity Services Working Group</b></p>	<p>During 2007/08, the Committee considered three reports on Maternity Services. Provision of local maternity services remains an important concern and a Working Group has been appointed to explore the issues in more depth. The following members have been appointed to the Working Group: Cllrs Rawlings and Margo.</p>	<p>To maintain a watching brief on the provision of maternity services, in the context of the outcomes of the BEH Clinical Strategy.</p>
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<p><b>B) Adult Social Care</b></p>		
<p><b>Choice and Independence – A Vision for Adult Social Services and the commissioning strategies:</b></p> <ul style="list-style-type: none"> <li>• An Integrated Commissioning Strategy for Adult Mental Health</li> <li>• An Integrated Commissioning Strategy for Learning Disability Services</li> <li>• A Commissioning Strategy for Physical and Sensory Impairment Services</li> <li>• Independence, Choice and Control: services for older people</li> </ul>	<p>A report setting out current performance, progress and expected levels of performance against the social care outcomes framework as a result of the implementation of the action plans within the commissioning strategies.</p>	<p>Timing of reports TBC in consultation with the service area.</p>
<p><b>Corporate Monitor Reports – 2<sup>nd</sup> and 4<sup>th</sup> Quarter Performance Indicators; to now also include information on the provision of intensive home care services and social services client assessment times.</b></p>	<p><b>Q2 and Q4 will be considered at committee. Q1 and Q3 information will be circulated for comments to members for information only, outside of the normal timetable of meetings.</b></p>	<p>Timetable for 08/09 to be confirmed.</p>
<p><b>Joint meeting on Young Carers – Joint report, to be considered with First Class Education OSC.</b></p>	<p>A joint report to consider the social and educational impact on young carers.</p>	<p>Joint meeting date for committees - to be confirmed</p>
<p><b>Adult Social Care – Commission for Social Care and Inspection (CSCI)</b></p>	<p>Consideration of the next CSCI annual report.</p>	<p>February 2009</p>
<p><b>Key Service Changes Around Achieving More Targeted Outcomes</b></p>	<p>Report will set out key service changes developed to focus on specific outcomes which have been identified.</p>	<p>Provisional Agreement for *April 2009</p>

<b>Joint Overview and Scrutiny Committees</b>		
<b>Healthcare for London (pan London Darzi NHS Consultation)</b>	This London wide JOSC is made up of 32 London Boroughs. JOSC Meetings took place between November 2007 and April 2008, in response to phase one of the consultation. It is anticipated that the second phase of the consultation will pick up localised issues.	
<b>Barnet, Enfield and Haringey Clinical Strategy</b>	The NHS consultation that the JOSC was formed in response to ended in November 2007. The decision of the local PCTs was to select Option 1. The JOSC referred the decision under the Health and Social Care Act 2003. The referral has resulted in a full investigation currently being carried out by the Independent Reconfiguration Panel (IRP), to which members of the JOSC have been giving evidence. The final report of the IRP will be published at the end of July.	The IRP report will set out its recommendation and it will be for the Secretary of State for Health to determine whether to accept or reject, in whole or in part the recommendations of the JOSC.

## TACKLING CRIME AND HOUSING OSC WORK PROGRAMME 2008/09

Items to be considered	Information	Source of report Internal (LBB) / External	Projected Outcomes / Action
Corporate Services Performance Indicators – 2007 / 08 – Quarter 4			
Report on inspection of Barnet Homes	An update on the inspection of Barnet Homes being conducted by Housing Inspectors from the Audit Commission.	Internal (Housing)	To examine the issues on the recent inspection of Barnet Homes by the Audit Commission
An update report on the recommendations of the Hate Crime Review	To receive an update of the Working Groups recommendation in relation to working with the Police to combat ASB.	Internal (Corporate Governance)	
An update report on the ASB Working Group	At the request of the chairman, a preliminary report discussing the Working Groups Progress to date towards their work and understanding of ASB in the borough	Internal (Housing)	To facilitate a better understanding of the issues surrounding low cost, affordable housing.
Work Programme 2008/2009	Members of the Committee to receive suggested items for consideration within the OSC's ToR	Internal (TC & H OSC Members / Scrutiny Officer)	

ASB Review	Final report of the Working Groups investigations	Internal (Corporate Governance)	Review
The Barnet Crime & Disorder and Substance Misuse Strategic Assessment 2007/2008	The strategic assessment aims to recommend long-term priority issues to be addressed. In regard to priority level recommendations, crime issues and Anti social Behaviour (ASB) issues are considered separately i.e. the document recommends a number of crime priorities <i>and</i> a number of ASB/disorder priorities.	Internal (Corporate Governance)	Overview of the Council's knowledge and understanding of Barnet's Community Safety Issues / partnership strategy
Licensing Act 2003 – Implementation of Licensing Policy	Review of the impact of the Act and the implementation of Barnet's licensing policy (which took effect on 7 February 2005).	Internal (Corporate Governance)	
Corporate Services Performance Indicators – Quarter 1			
Work Programme 2008/2009	Members of the Committee to receive suggested items for consideration within the OSC's ToR	Internal (TC & H OSC Members / Scrutiny Officer)	

Homelessness Strategy	Review updated Homelessness Strategy and implementation progress - including what further action is being taken to reduce the use of bed and breakfast and hotel annexe accommodation in favour of more acceptable forms of temporary accommodation.	Internal (Housing / Community Services)	Members to receive a review of the policy as appropriate.
Medium Term Financial Strategy	A report from the head of Strategic Development clarifying how shared ownership / shared equity schemes operate and options for dealing with residents affected as a result of estate regeneration schemes	Internal (Housing)	
Housing Associations Performance Review	Report on the performance of the seven housing associations on the council's approved development panel during 2008 / 2009	Internal (Housing / Corporate Governance)	Review
Work Programme 2008/2009	Members of the Committee to receive suggested items for consideration within the OSC's ToR	Internal (TC & H OSC Members / Scrutiny Officer)	
Corporate Services Performance Indicators – Quarter 3			
Draft Budget 2009/2010	Scrutiny of Housing & Corporate Governance Budget, as part of consultation with all overview and scrutiny committees on the draft service budgets for 2009 / 10.	Internal (Housing / Community Services & Corporate Governance)	
Work Programme 2008/2009	Members of the Committee to receive suggested items for consideration within the OSC's ToR	Internal (TC & H OSC Members / Scrutiny Officer)	

Housing Revenue Account Business Plan		Internal (Housing)	To comment and receive commentary on the future of Council Housing in accordance with the HRA.
Work Programme 2008/2009	Members of the Committee to receive suggested items for consideration within the OSC's ToR	Internal (TC & H OSC Members / Scrutiny Officer)	
<b><u>Items to be considered:</u></b>			
<ul style="list-style-type: none"> <li>• Older People's Housing Strategy</li> <li>• Procurement of Housing Database</li> <li>• The Mayor's Housing Strategy</li> </ul>			
Work Programme 2008/2009		Internal (TC & H OSC Members / Scrutiny Officer)	
Corporate Services Performance Indicators – Quarter 3 / End of Year			
<b><u>Items to be considered:</u></b>			
<ul style="list-style-type: none"> <li>• Housing Benefits Administration</li> <li>• Estate Regeneration</li> </ul>	Progress report on the regeneration of the four major estates		

## RESOURCES, PERFORMANCE AND PARTNERSHIP OSC – 2008/09 WORK PROGRAMME

Potential Items to be considered	Information
Local Area Agreement – Agreed Targets	This report sets out the negotiated targets agreed for inclusion in Barnet's Local Area Agreement.
Customer Relationship Management	This report will consider the council's approach to development and proposed implementation of Customer Relationship Management as a critical element of managing the interface with service users.
End of Year Performance Monitoring data 2007/08	For the Committee to consider end of year performance management data.
Resources, Performance and Partnerships OSC Work Programme 2007/08	The committee are asked to consider and comment on areas of work that could be undertaken during 2008/09.



**FORWARD PLANNING – SUGGESTED LONG LIST:**

**A) Value for money, use of resources**

Corporate Monitor Reports - 2 <sup>nd</sup> and 4 <sup>th</sup> Quarter Performance Indicators	Q1 and Q3 information will be circulated for comments to members for information only, outside of the normal timetable of meetings.	
Working Group (2)	Electoral Registration	
Asset Management	To consider council use of resources and to identified areas for improvement.	
Budget / Corporate Plan	Draft Corporate Plan with headline budget information.	

**B) Organisational development and partnership working**

Development of the IS Strategy	Outline agreement is that scrutiny members (Resources PP OSC) will be involved with the development of the IS strategy, starting with the brief to consultants (who will be working on the strategy with officers) and be involved in the process leading to final outcomes and recommendations. It is envisaged that this could take up to six months. A maximum of two Members would be workable.	
Working Group (1)	Local Strategic Partnership. The final report of the working group was considered by Cabinet in October 2008.	
LAA Agreement Monitoring and Evaluation	Monitoring of the delivery of targets within the LAA structure and strategic evaluation of the outcomes. Additionally, for there to be a “first stat” style scrutiny meeting focused LAA outcomes. This is intended to be a single issue meeting with no other items other than the Work Programme.	
Strategic HR – To be a series of reports involving directorates across the Council.	For the Committee to consider Human Resources policies and strategies that focus on health and safety provisions for employees. Strategic HR is to be lead support for this item, with the proviso that this work is undertaken in collaboration with directorates across the Council.	
Community Engagement Strategy	For the Committee to comment on the strategy.	
Council mechanisms for consultation	Community Engagement Strategy	

## CLEANER, GREENER, TRANSPORT & DEVELOPMENT OSC WORK PROGRAMME 2008/09

The theme of this committee's work programme is *Looking ahead to 2016 – Barnet Council's target of 20% CO<sub>2</sub> reduction*

LONG LIST ITEMS TO BE CONSIDERED	INFORMATION
Review – The Quality of Planning Decisions	
Corporate Services Performance Indicators	
Woodland Burials	
Traffic Management in relation to persons Killed and Seriously injured (KSI)	
Trade Waste and Commercial Waste	To scrutinise the Trade Waste policy with a view to establish how the 20% target can be achieved and what the Council's responsibility is towards trade waste. To include the scrutiny of commercial trade waste policy, in relation to High street premises, supermarkets and other premises and to consider the policy when giving planning permission in terms of sustainability and how this is supported by the Council once premises start operating.
Green Waste	A review will examine current arrangements for the collection of Green waste.
Planning decisions for existing builds and extensions	To examine how these can comply with the carbon reduction targets. Also the examination of front gardens/drives with a view of council policy in this area and examination of environmental issues.
Project plans for town centres and transport within town centres	
Transport – the scrutiny of the	

School Travel Programme	
A review of new recycling contract	
A review of planning white paper	
Any other reviews the committee agrees to conduct during the course of the year	
Transport for London Strategy	A report on the Transport for London Strategy to investigate investment on highways in Barnet with special reference to the Henley's Corner on the North Circular Road and forward planning for the 2012 Olympics.
Street Cleansing Services	A status report on the Street Cleansing Services initiative setting out the strength and weaknesses of the current system and its practical implications across the borough to enable the Committee to determine any future actions.

## FIRST CLASS EDUCATION AND CHILDREN OSC WORK PROGRAMME 2008/09

FORWARD PLANNING – LONG LIST	INFORMATION
Criminal records Bureau checks on Governors – An update report on the Safeguarding Vulnerable Groups Bill	An update report on the Safeguarding Vulnerable Groups Bill
Information on how the borough deals with Special Educational Needs	Briefing Note.
An update on the Primary Schools Capital Investment Programme	Information providing an update on the Primary Schools Capital Investment Programme
Ofsted Summary Report	The committee received a summary of all Ofsted visits and reports to Barnet schools during the Spring Term 2008.
Young people and reducing Crime	
Widening the curriculum	
An update on the Primary Schools Capital Investment Programme	
Post-16 Education	
Reducing the impact of homelessness for young people	

Ofsted Summary Report	
Working Group Review (1) Children's Centres	
Working Group Review (2) Transition from Children's to adult services, focusing on mental health services for looked after children	
Youth sexual health (male and female) – request a report from the PCT	
Unplanned Teenage Pregnancies	
Statutory Regulation 33 – Officer Visits to Barnet's Children's homes	
Key Performance Indicators	The committee to receive a report on the Performance Indicators covered by this committee.
Member Visits to children's homes	
Young Carers Review- Joint Working Group (First Class Education & Children OSC and Supporting the Vulnerable in our Community OSC)	