

Corporate Governance and Standards Committee Report

Ward(s) affected: All

Report of Director of Resources

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Burchatts Farm Barn Final Audit Report

Executive Summary

The final audit report by KPMG into the leasing of Burchatts Farm Barn (BFB) is presented at Appendix 1. As per the terms of reference of the audit, the purpose of the review was to look at the design of controls and associated governance arrangements around the decision-making process, compliance with the controls and governance arrangements and then identify any learning. The review was commissioned by officers in January 2020 following a request from a councillor which was supported by the (then) Lead Councillor for Finance and Assets. The request was made to KPMG in line with the co-sourced internal audit contract. The scope of the review, as set out in the initial terms of reference shown in Appendix 2, was set to focus on the internal processes rather than political decisions and allow officers to identify and learn from any gaps in processes and procedures. Unfortunately, the review has been delayed due to the Covid 19 pandemic and officer resources being focussed on the Council's response to the pandemic.

This covering report provides additional contextual information around the decision-making process undertaken in relation to BFB and how the process fits with the decision-making framework set out in the Council's Constitution.

The decision to lease BFB for commercial purposes was initially a decision taken by the Corporate Management Team (CMT) in consultation with the Lead Councillor for Assets following consultation with the Property Resources Group (PRG) and ward councillors. However, confirmation of the decision was ultimately taken by full Council in February 2018 as part of the Council's budget process following submission and consideration of a savings bid for the 2018-19 budget. The Council was able to make a decision to lease the asset for commercial purposes as no specific designated status required an alternative approach. The Council followed an open market tender process and leased the property to the highest bidder, demonstrating that it complied with the need to obtain best consideration as required by s123 of the Local Government Act 1972.

The decision-making process resulting in the decision to lease and the choice of tenant followed the procedures set out in the Council's Constitution for commercial leasing of an

asset under s123 of the LGA 1972. Had the decision to lease the asset for social, environmental, or economic wellbeing of the area been taken then a different process would have been followed. The Council has alternative processes and procedures in place to allow it to lease property for social, environmental, and economic wellbeing purposes and can provide examples to Councillors of when and which assets have been leased for this purpose.

Concerns have been raised about the leasing process which resulted in the audit review. The main area of concern seems to be regarding the initial decision to lease the asset for commercial purposes rather than for leasing the asset for social, environmental, and economic wellbeing purposes. In order to ascertain which of the Council's assets should be leased for the Social, Environmental, and Economic wellbeing purposes, officers recommend that the Council develops a community strategy and as part of the strategy undertakes an audit of the need for community facilities and the facilities that are available to meet that need in different areas of the borough to identify gaps in provision. This can then lead to the development of a community asset transfer policy which is recommended by CIPFA in its most recent guidance on asset management in local government.

No process is perfect and there are learning points that can be learned in any process or review. In accepting the findings and recommendations we have acknowledged:

- (1) That the Council's Asset management framework needs to be reviewed and updated and in doing so a more detailed disposal policy agreed formally by Executive
- (2) That a community strategy and community asset transfer policy should be developed and adopted by the Council
- (3) That consultation with residents' groups and users of buildings should be undertaken where it is proposed that the Council's operational buildings are to be leased
- (4) That the Council should better promote the ability for local groups to nominate 'Assets of community value' so that assets that are important to the community can be locally listed and the Council are aware of which assets are important to the community
- (5) That the provision of financial information in informal briefing notes to Councillors as part of working groups should be checked by the Council's finance team
- (6) That the Council's new project and programme governance framework should be used to help document decisions around the review of asset utilisation and assessment of alternative options in order to help document leasing and disposal decisions in the future
- (7) That a balanced scorecard approach to evaluating bids for property should be implemented to help record the decision-making process
- (8) That minutes of working group meetings should be clear regarding recommended courses of action

Recommendation to Committee

To note the final audit report on Burchatts Farm Barn and the content of this covering report.

Reason for Recommendation:

To ensure good governance arrangements and internal control by undertaking an adequate level of audit coverage

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 To present the final version of the Burchatts Barn Audit report.

2. Strategic Priorities

- 2.1 The audit of Council services supports the priority of providing efficient, cost effective and relevant quality public services that give the community value for money.

3. Background

- 3.1 The review of the leasing process for Burchatts Farm Barn (BFB) was commissioned by officers in January 2020 following a request from a councillor which was supported by the (then) Lead Councillor for Finance and Assets. The scope of the review, as set out in the initial terms of reference shown in Appendix 2, was deliberately set by officers to focus on the internal processes rather than the political decisions in relation to the site and provide an opportunity to identify learning from any gaps in processes and procedures,.

- 3.2 Officers have in many cases partially accepted the recommendations of the review and, as detailed in the action plan, have agreed improvement actions. The partial agreement is due to not necessarily agreeing with all of the findings of the audit but despite this, being able to accept and implement the resulting recommendations. Following the issue of the draft report by KPMG to officers, a number of meetings have been held and follow up information has been provided to the auditors. Despite the additional information provided and requests to expand the audit to include all relevant stakeholders, the auditors felt that the core substance of their findings and recommendations remained and as such the report has only been slightly updated between the draft and final version.

- 3.3 The auditors have also been mindful that, for transparency purposes, the draft report had been published and as such this provided limited scope for making substantial changes between the draft and final reports. Much of the further information that officers have put forward was felt by the auditors to be contextual and more related to the political decision making (which was out of scope of their review) rather than audit evidence relating to the internal processes and procedures. As such, to provide context and background to the audit report and the process of the decision making, the contextual information and decision-making processes are provided in this covering report.

- 3.4 The scope of the review was initially narrow and the list of key contacts to be involved in the review limited to a small number of officers of the Council, the review was expanded during the course of the audit at the request of a councillor to involve a wider set of stakeholders, many of whom were external to the Council and not party to the decision-making process. Officers agreed this request with the auditors. Unfortunately, whilst external stakeholders were sent a questionnaire to canvass views, not all relevant stakeholders involved in the decision-making process were engaged with or interviewed as part of the audit, although some additional stakeholders were involved following the issue of the draft report. Key stakeholders that were not involved in the audit either until after

the draft report was issued or have still not been involved in the audit are as follows:

Stakeholder	Role
Geoff Davis	Lead Councillor for Asset Management May 2016 to May 2018 and member of the Property review group
Richard Billington	Lead Councillor for Parks and Countryside in 2015- 2019
Nigel Manning	Lead councillor for Finance and Asset Management May 2015 to May 2016 and then again May 2018 to May 2019
Paul Spooner	Leader of the Council 2015 to 2019
Matt Furniss	Deputy leader of the Council and Ward Councillor for Christchurch 2015 to 2019
Nikki Nelson Smith	Executive Committee member and Ward Councillor for Christchurch 2015 to 2019
Caroline Reeves	Member of the Property Review Group and Leader of the main opposition group 2015 to 2019
Claire Morris	Director of Resources and Chief Finance Officer since 2018, member of the Property Review Group since 2013 to present day
Paul Stacey	Parks and Landscape Manager
Philip O'Dwyer	Director of Community Services prior to retirement in 2020, member of the property review group and director responsible for asset management for the period under review

- 3.5 Claire Morris, Paul Stacey, and Councillor Nigel Manning were consulted after the issue of the draft report. Councillor Paul Spooner and Caroline Reeves have been interviewed by officers in the preparation of this covering report. Former councillors and officers involved in the decision-making process were not interviewed for this covering report because it is felt serving councillors and officers have been able to provide the required information. Councillor Billington was not interviewed due to ill health.
- 3.6 The scope of the audit was to assess the controls and decision-making related to disposals of community assets. However, BFB is correctly classified as an 'operational land and buildings asset (community facility)', it is not classified as a 'community asset' (see below) nor is it classified as an 'Asset of Community Value (ACV)' which is a formal designation. Both terms have been used to incorrectly describe the asset by some stakeholders. The characteristics that made the property an operational asset were that BFB was used by the parks department for letting as a hall for hire (event facility) to generate income for the service, as well as being used by the Council for various council meetings and events. In addition, the flat above the barn was used as staff accommodation for a member of parks staff up to 2014.

- 3.7 The Council's assets are categorised in accordance with the guidelines and practices stated in the International Financial Reporting Standards (IFRS)-based Code of Practice on Local Authority Accounting (the 'Code'), published by the Chartered Institute of Public Finance and Accountancy (CIPFA); under which the Council's 'Community' assets typically comprise open space land held in perpetuity. All property assets that contain a significant building structure are held and categorised as Heritage, Investment, or Operational Land and Buildings.
- 3.8 The core areas where the findings are not fully accepted, and reasons why, are discussed in the following paragraphs.

Asset management process and framework (Recommendations 1, 2, 8 and 9)

- 3.9 The Council adopted the Asset Management Strategy and Framework in 2014. At the time that the initial decision to lease Burchatts Farm Barn was made (2016-17), the strategy and framework, only being two or three years old, was still current and relevant. It would be typical of an asset management strategy to be in place for a period of around four years. This timescale is also reflected in the fact that CIPFA have issued guidance and codes on public sector or local authority asset management and valuation in the years 2012, 2016 and, most recently, in 2020. As set out in our response to the recommendation, it is accepted that this should be updated and that it would be useful for the policy to be adopted formally by the Executive rather than being an unadopted operational level policy.
- 3.10 In addition, proper control and governance around the acquisition, security, management, and disposal of assets are set out within the Council's Constitution, Part 4, Financial Procedure Rules, Section C5 to C6.
- 3.11 The notion that there are '*no policies, procedures, controls or governance structures in place*' (as stated in recommendation 2) is therefore felt by officers to be a rather harsh statement. Following release of the draft report and further representations made by officers, the auditors have acknowledged that there are policies in place but have stated that in their view, they are not *consistently applied* because the auditors feel that legal, financial, social, cultural, and historic factors were not taken into account; again this is a matter which officers do not fully accept as outlined in the next section.
- 3.12 Officers are satisfied that the classification of assets follows CIPFA guidance; however, a greater understanding of how assets should be classified is clearly required across the Council.
- 3.13 Debate at the Committee's meeting on 19 November 2020 and comments made by the Lead Councillor for Economy indicate that the main area of concern is around having a policy or strategy that would determine which assets are disposed of for commercial purposes (i.e. at market value or 'best consideration') and which of the Council's assets should be disposed of for the environmental, social and economic wellbeing of the area (i.e. potentially at less than best consideration). Officers are of the opinion that the need for this distinction is not about the classification of assets but relates to the Council needing to have a community strategy linked to a need for the provision of community facilities and

a community asset transfer policy. Officers suggest that a community strategy and a community asset transfer policy is developed. The strategy should identify what the need for community facilities is within an area, the current provision of community facilities within an area and identify gaps in provision. The policy could look to identify which of the Council's assets meet any identified gap and could be subject to transfer to the community to meet that need.

- 3.14 Separate to the Council's Asset Management framework, the Localism Act allows local communities to nominate land and/or buildings as 'Assets of Community Value' (ACV). Any privately and publicly owned property can be nominated; examples include pubs, community centres, village shops, libraries, and allotments. Land or buildings can only be successfully nominated where the main use improves the social wellbeing of the community. Information to be included on the nomination form needs to explain how the asset improves (or has improved in the past) the social wellbeing or interests of the local community and is capable of being used to further the social wellbeing of the local community in the next five years. The definition of 'social interests' includes cultural, recreational and sporting interests. Once a nomination has been successfully made and a nomination has been accepted the asset is locally listed and then if a land or property owner wishes to sell the ACV, the Council must be informed and the community is provided with an opportunity to bid. The Council can be the land/property owner of an ACV but is unable to nominate its own assets as ACVs - other groups have to make the nomination. Nominations can only be made by parish councils, neighbouring parish councils, 'Unincorporated Groups', neighbourhood forums, or community interest groups with a local connection. The only ACV that has been listed locally which is owned by the Council is the Electric Theatre.
- 3.15 It is worth noting that, to date, no community group or organisation has made a nomination for BFB to be an 'Asset of Community Value' (ACV). As such there are no specific requirements around the disposing or leasing of BFB which the Council would be required to follow other than legislation, its own Constitution and asset management framework. Guidance around the creation of ACVs is already included on the Council's website: <https://www.guildford.gov.uk/article/18430/Assets-of-Community-Value>. However, officers have accepted recommendation 9 from the auditors that this should be better promoted to improve awareness by community groups.

Decision making (Recommendations 2, 4, 5, and 7)

- 3.16 Firstly, it is important to understand the decision-making processes of the Council as a whole, before understanding how they were applied in the disposal of BFB.

General

- 3.17 As referred to in paragraph 3.10 above, the rules around disposal of Council assets are set out in the Council's Constitution, Part 4 Financial Procedure Rules sections C5 – Asset Security and C6 – Asset Disposal. The audit report does not refer to the decision-making processes set out in the Council's Constitution nor does it make comment on whether the process of disposing of BFB followed the Council's Constitution. The Constitution is the Council's primary governance

document setting out how the Council operates. The requirements of the Constitution were referred to a number of times by officers in response to the draft report. The Constitution is available on the Council's website. Section C5 of the Financial Procedure Rules in the Constitution includes a requirement for Directors and Service Leaders to *ensure they consult with the Director of Service Delivery and the CFO (Chief Finance Officer) on any proposed transactions, including the leasing, disposal or acquisition of land and buildings... to ensure that where land or buildings are surplus to services' requirements, a recommendation for sale is the subject of a joint report by the Director or Service Leader and Director of Service Delivery in consultation with the Lead Specialist – Legal and the CFO.*

3.18 Section C6 of the Financial Procedure rules states '*it would be uneconomic and inefficient for the costs of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and rules of the Council*'. Under the section 'Key Controls – Land and Buildings' it goes on to say that *the disposal of land and building assets must be in accordance with the provisions set out in the Local Government Act 1972 including the obligation to receive the best consideration reasonably obtainable in accordance with s123 of the Local Government Act 1972. All disposals shall be at market value unless otherwise agreed by the CFO in consultation with the Leader or appropriate Lead Councillor.*

3.19 Council Constitution Part 3 – Responsibility for Functions - Delegation to Officers, which is relevant to this report:

- (a) General Delegation to All Directors and Service Leaders....To undertake the day to day management and operation of staff reporting to them and of the premises and services for which they are responsible in accordance with the policies and procedures laid down by the Council
- (b) Delegation to Director of Strategic Services – Head of Asset Management.... To undertake the general management and control of the Council's land and property holdings and to achieve the best economic and social use of land and buildings including their appropriation for the purposes of achieving the Council's priorities..... In Consultation with the appropriate lead councillor and subject to being satisfied that the Council will receive the best consideration reasonably obtainable: subject to consultation with the Chief Finance officer, to accept terms for the granting, renewing, reviewing and varying of leases of Council owned land and property held in the General Fund

3.20 Where decisions are taken using the delegated authority of officers, the matter is recorded on a 'Delegated Authority Form' (known as a 'DA Form') and published on the decision register on the Council's website.

3.21 In addition to the Constitution, the Corporate Plan drives the service plans and work programmes of the Council. The Council's Corporate Plan 2015 to 2020 had a corporate priority under the theme 'Your Council' to 'maximise the value derived from our property portfolio'. This corporate priority would have been reflected in the service plan for both the Asset Management Service and the Parks and Countryside Service.

Application of the Council's Decision-making framework to BFB

- 3.22 The proposal to find an alternative use for Burchatts Barn was initially put forward by the former Head of Parks and Countryside in 2014. The reason for the proposal being raised was the fact that the member of staff who had been using the BFB flat as staff accommodation left the Council's employment and income from hiring out the barn had been declining. As a result, it was felt that use of the asset in its existing form was not providing value for money for the Council. Informal advice on alternative options was therefore sought from the asset management team which in turn commissioned exploratory external advice on alternative uses for the property. The ability for a Head of Service to liaise with the Head of Asset Management to initiate a review of property within their service, is in line with the general delegation to service leaders as set out above in paragraph 3.19(a). An executive decision at this stage is not necessary nor would we usually expect to complete a DA form at this early stage; however, as the audit found, the matter was informally discussed at the Property Review Group (PRG) to ensure that all officers and councillors relevant to the decision-making process were fully briefed on the proposals.
- 3.23 Between the period 2014 and late 2016 various discussions were held between the parks department and community sports groups which regularly use Stoke Park to see if there was an option for BFB to be leased to them to use as a 'club house' that could then also be hired out by, and generate income for, the community/sport group. In addition, discussions were held with the Girl Guides to see if they were interested in relocating from the Guide Hut on Nightingale Road to BFB. These discussions were intermittently referenced in the minutes of PRG during the period 2014 to 2016 but ultimately did not progress beyond discussion stage. As a result, at the PRG meeting in October 2016, it was mentioned that following a lack of progress, a briefing paper would be taken to CMT. Officers consider that alternatives to commercial leasing were considered during these informal discussions (recommendation 5) but were rejected.
- 3.24 A formal briefing note 'Summary Property report – Burchatts Farm Barn' was presented to the CMT on 29 November 2016 (see Appendix 3) which reviewed various options following the discussions outlined above, but recommended that the property be leased out for commercial/market income. In the same report it was confirmed that the service had stopped taking bookings beyond 31 March 2017. The CMT consists of the Managing Director (Head of Paid Service), all Directors (including the Chief Finance Officer), and the Monitoring Officer. As such the briefing note, met the criteria set out in paragraph 3.17 above, that the service leader consults with Directors and the CFO in relation to any proposed leasing transactions. The minutes from the CMT meeting on 29 November 2016 record that CMT agreed the recommendation to market the property and asked the Parks and Countryside Manager to consult with the ward councillors and PRG to progress the matter.
- 3.25 It is worth noting that the briefing note (Appendix 3) did only report the income and expenditure relating to the barn and did not include information in respect of the Burchatts Farm cottages as these are separate buildings to the barn and in a different location. The note also states that the figures included, amongst other things, support service charges and indirect costs that would not be necessarily

be saved. (Recommendation 4) In addition to costs recorded within the BFB cost centre other overhead costs such as casual staffing, administration, and rangers.

- 3.26 PRG considered the Summary Property Report – Burchatts Barn (Appendix 3) at its meeting on 17 January 2017. The minutes of the meeting state *'Report and Summary regarding future use of barn circulated to the group. Findings of report are that the property is currently costing Council between £30-£70k per year. Commercial agent advice received, that D1 was most likely alternative use if leasing the property out. Other options include the possibility of moving girl guides in Nightingale Road to site to free up their existing site for the redevelopment of Stoke Park Nursery. A restaurant was considered to be impractical due to size, location, and parking. Financial implications of each proposal to be investigated and reported back to next meeting.'* The meeting of PRG on 21 February 2017 also considered BFB further; the minutes of the meeting record *'Burchatts Farm Barn – Gone to market for expressions of interest for 6-week period, which will start after press article released'*. The next mention of BFB in minutes of PRG was then at the meeting on 18 April 2017 when it was confirmed that the market testing was being undertaken and expressions of interest were being sought. At that point the marketing campaign was due to run for a further three weeks and the outcome would be reported to a future meeting.
- 3.27 As referenced in the audit report, following conclusion of the marketing exercise to seek expressions of interest, 12 interested parties submitted bids. PRG minutes from the meeting on 16 May 2017 document discussion of the expressions of interest received and noted that a report would be presented to CMT then further discussion would be held at the next meeting. A further briefing note was presented to CMT on 30 May 2017 and then again to PRG on 20 June 2017 documenting that of the 12 bids, four were deemed to be appropriate and would complement Stoke Park. The briefing note went on to state that of the four, the preferred bidder was a local GP surgery. Reasons were given within the briefing note as to why the GP surgery was the preferred bid. The minutes of both CMT and PRG record discussion of the item but are not specific about the outcome of the discussion, albeit officers took to understand that both meetings were supportive of the preferred choice advancing.
- 3.28 Following the marketing process, as found in the audit report, a 'savings bid' was submitted as part of the 2018-19 budget setting process. As is normal practice, savings bids were discussed by the Joint Executive Advisory Board Budget Working Group (JEABBWG) and the Joint Executive Advisory Board (JEAB) prior to being presented to Executive and then full Council as part of the budget report. The JEABBWG and JEAB are both cross-party groups. The JEABBWG met to discuss the bids, including the bid to lease BFB on 10 November 2017 and JEAB discussed the bid on 23 November 2017. The JEABBWG was held in private as it is a working group, like PRG. However, JEAB is a public meeting which would have been webcasted and the agenda and minutes of that meeting are available for viewing on the Council's website. The informal notes from the JEABBWG indicate that the working group was supportive of the proposal to lease BFB. The minutes of the JEAB make no specific reference to the bid to lease BFB despite discussion over other bids being documented in the minutes, the webcast of the

meeting is no longer available for review. Officers understood that JEAB was generally supportive of the proposal to lease.

- 3.29 As found within the audit report, discussions with the GP surgery unfortunately broke down in 2018 and the property was re-marketed by the Council's agents. The outcome of the marketing exercise was discussed at PRG on 20 November 2018; the minutes of the meeting state *'Following a marketing exercise, Council received nine offers. The highest bidder and most positive bid was from a chiropractic clinic looking to relocate prior to April 2019. MA has worked on heads of terms with the agent and will submit instructions to Legal as soon as possible. When planning consent is received, we can proceed quickly'*. PRG were kept up to date on the progress of negotiations between November 2018 and March 2019. The minutes from the meeting on 19 February 2019 in relation to BFB record that *'aiming for exchange of contracts on Friday 22 February 2019'*.
- 3.30 PRG is an advisory working group appointed by the Executive, and during the period under review, the group consistently included the Lead Councillor with responsibility for assets and the leader of the main opposition group on the Council. It is not a decision making group and has no decision making powers, as such whilst minutes could potentially have documented clearer recommendations from the group, it would not be expected that there would be a formal decision set out in its minutes as recommended by the auditors (in recommendation 7). As set out in paragraph 3.19 (b) above, Leasing of BFB was a decision delegated to officers, that should be documented on a DA form. The decision was not made by a formal meeting of the Executive and as such no Executive minutes relating to the decision exist.
- 3.31 Whilst the decision was an officer decision, the reports presented to CMT, PRG JEABBWG and JEAB and the minutes of the relevant meetings document that the CFO and Lead Councillor for Asset Management were regularly consulted as per the requirements of the Council's Constitution (see paragraph 3.16 and 3.18 above) and indeed, that a far wider group of both executive and non-executive councillors, were consulted on the proposals at various points in the decision making process. In addition to the formal meetings and minutes there is also a significant amount of email correspondence demonstrating that appropriate councillors (including the Leader of the Council, Lead Councillor for Parks and Countryside and the ward councillors) were consulted on the process as it progressed. The fact that the bid to lease BFB was approved by full Council, as part of the budget report, in February 2018 without comment, could be taken as evidence that the majority of the Council was supportive of the decision to commercially lease BFB or at least did not raise any objections. 32 Councillors voted for the budget, 9 abstained and 1 councillor voted against.
- 3.32 The above paragraphs demonstrate that the predominant opposition to the decision to lease came from outside of the Council. As noted by the auditors in their report, the objections to the leasing decision seemed to focus, initially at least, on the Council's choice of tenant rather than the decision to commercially lease the asset or the change of planning use from D1/D2 to just D1. The Council elections in May 2019 also then had a significant bearing on the decision-making process. Following the Planning Committee's refusal of the change of use application, the leasing of BFB became an election issue.

Following the change in political make-up of the Council at the May 2019 election, a review of the leasing decision was requested by the new Lead Councillor for Finance and Assets. The new review looked at other options for the leasing of BFB and an updated summary property report was again discussed at PRG as it had been earlier in the process. Unfortunately, the updated report discussed at PRG in October 2019 included expenditure on Burchatts Farm Cottages as well as BFB and this has led to recommendation 4 in the auditor's report. Whilst other options were looked at and discussed, once the Chiropractor Clinic successfully won their appeal against the refusal of the change of use application, it was decided by the Head of Asset Management in consultation with the Lead Councillor for Finance and Assets and the CFO that the lease to the clinic would be exchanged and completed.

- 3.33 The record of decision taken by Officers under delegated authority was recorded on a DA form initially in early 2019 (when the lease was exchanged with the lessee prior to the planning decision) and again in March 2020 when the lease for BFB was finally completed following the outcome of the planning appeal. A copy of the decision notice is available on the Council's website and was presented to the Corporate Governance and Standards Committee as part of the supplementary information paper at its meeting on 19 November 2020. This decision notice demonstrates that the Council complied with its Constitution in leasing of the barn.

The tendering process – communication and selection

- 3.34 Recommendations 3 and 6 relate to the communication of the tendering process for the leasing of BFB. Under findings and lessons learned the auditors on pages 15 and 16 it was identified that *residents' groups did not feel consulted on the matter of Burchatts Farm Barn. The newspaper advert was not seen widely enough and as such residents felt there was no due process for them to suggest alternatives to commercial leasing or to object to the Council's plans. The lessee's planning application received 86 written objections, and it would be better if these objections could have been made directly to the Council at a more appropriate time and in a more appropriate forum. The Council should make use of more communication tools such as social media accounts and informing local residents' groups.* The finding focussed on a statutory newspaper advert at the end of the process but ignores the finding earlier in the report on page 13 that the Council issued a press release detailing its intentions at the start of the process in March 2017. The Council normally promotes all of its press releases on its social media channels and so it is quite likely that social media would have been used to promote the press release, but this has not been verified. The press release was picked up by at least one local media site which ran a story on the Council's intention to lease BFB in March 2017. In addition, both in early 2017 and then again in Autumn 2018, the Council's property agents ran a full open tender and marketing campaign to invite bids for the future use of BFB. If community groups were interested in taking the lease, then there was an opportunity for them to have submitted an expression of interest or suggest alternatives at the time the property was marketed. Some community groups did express an interest and submitted bids. The range of bids received for the barn came from commercial and non-commercial organisations offering different uses and so it is not entirely clear why any particular community group would feel that they could not have

inputted into the process at an earlier stage. Officers assume that the reason was because they did not see the opportunity despite its promotion, and so have accepted that local groups that use Stoke Park and neighbouring residents' groups could have been communicated with as part of the marketing process in response to recommendation 3. It would be possible for the Council to request that its marketing agents write to local residents' groups and other stakeholders identified by the Council to promote opportunities for leasing or buying the Council's operational properties when they are put out to market.

- 3.35 The overall criteria used in the decision-making process as to the acceptance of a preferred bidder was the price 'consideration' offered, which was clearly stated in the marketing material sent to prospective bidders. Other factors taken into account in the decision-making process as to the best bid were satisfying various details such as the proposed use, whether it was complementary to Stoke Park and other tenants in the area, planning situation, deposit funds offered, any rent free requested, timeframe for occupation, commitment to paying repairs and maintenance, and financial security of the future tenant. Each bid was taken on its own merit as a property transaction and the Council employed its external, independent professional agent to recommend the best bid. Both times the Council officers in conjunction with the relevant councillors considered the recommendations, reviewed the alternative bids at PRG, and confirmed their agreement to the recommended best bids. However, these factors could be set out in a scorecard providing weighting to each of the qualifying criteria as is normal practice with evaluating contract tenders. As such officers have accepted the recommendation to implement a scorecard approach. This would also allow officers the opportunity in future to provide a weighting to social value and a weighting to price in a process where a decision to take social value into account was followed.

4. Consultations

- 4.1 In the preparation of this covering report and response to feedback at the November meeting of this Committee, the former Leader of the Council and the former Leader of the main opposition group (who was a member of PRG) were interviewed by officers.
- 4.2 Councillor Spooner's comments on the report are: *at the time CMT and Executive agreed to review GBC assets, they wanted to support heritage assets in the Borough but did not see sense in leaving buildings empty. PRG included Cllr Manning, Angela Gunning and Caroline Reeves and was cross party¹. The discussions among the majority of the Executive were around the positive impacts of Burchatts Barn becoming a medical centre i.e. good community use. This option fell through. Following much debate, the Executive decided to follow Cllr Manning's advice as lead member (by then following his re-appointment as Lead Councillor for Finance and Assets in May 2018), together with the Asset Management team advice, and proceed with the lease. Internally GBC did*

¹ Officer correction: Cllr Manning was initially a member of PRG up to 2016 but then became Deputy Mayor and then Mayor so was not a member of PRG from May 2016 to May 2018, Cllr Davis was the Conservative PRG member. In addition, Cllr Gunning was not a member of PRG).

everything professionally and correctly, they had a review, before the decision was finalised and members and officers were at one and all in agreement that this was the appropriate way to move forward. The decision to do the audit was right to demonstrate there was nothing untoward. The principle was right, but Cllr Spooner does not understand why the list of recommended participants excluded any elected member prior to 2019. Cllr Manning was asked late in the day for comments. Cllr Spooner has only been asked to comment after voicing his concerns at the first public meeting. The FOI disclosure shows that there was nothing untoward in the way the professionals dealt with the disposal. The Council should have allowed KPMG to get on with the audit without a particular councillor leading it, as such this is not an objective report. In relation to the recommendations and findings, despite the way it was handled, the actual recommendations in substance are acceptable. It is more damaging to officers as it gives the impression of incompetence which Cllr Spooner does not think was there. Cllr Reeves was on PRG as the leader of the opposition, she is the one person who has continuity in this and should have also been included in the audit process.

- 4.3 Councillor Reeves was a member of PRG throughout the process and therefore was interviewed by officers in the drafting of this report. Councillor Reeves' comments are:
Cllr Reeves stated that at PRG they had had the usual debate around it, lettings were infrequent, costs were high, the flat needed a lot of work, the sound proofing didn't work so the flat occupier can hear everything going on in the Barn. Cllr Reeves was later on aware some people were not happy but her own thoughts were that if people were so keen, we kept the building then more people should have hired it. Cllr Reeves felt the whole issue of who was going to rent it got confrontational, but they went through the due process. Cllr Reeves confirmed she was comfortable with the process as a member of PRG. It was marketed etc in accordance with the process we had. The lessons learnt from this disposal is although legally we complied with the advertising requirements, this does not always reach everybody, so we should look to advertise more widely in future. In relation to the KPMG recommendations, the type of asset, GBC needs to address this about lots of buildings. Cllr Reeves felt point 3 was very pertinent we advertised in the local paper, but not enough people read it, it did not reach everyone.

5. Financial Implications

- 5.1 There are no financial implications as a result of this report. The leasing of the barn has generated an income stream for the Council of around £40,000. As the lease is a full repairing and insuring lease, the Council has also been able to recognise net cost savings of around £10,000 on top of the income stream. As a result, the overall benefit to the Council is around £50,000. The Council undertook an open market tender exercise in order to lease the property and is therefore satisfied that it has achieved best consideration as required by the Council's Constitution and section 123 of the Local Government Act 1972.

6. Legal Implications

- 6.1 The Council marketed the letting on an open market tender basis and granted the lease to the highest bidder. As such the Council was able to evidence that s.123 of the Local Government Act 1972 was complied with in that best consideration was achieved.
- 6.2 The decision to grant the lease was taken by the relevant officer (who consulted with the CFO and Lead Councillor) as required by the scheme of delegation in the Council's Constitution, the notice of the decision was also published as required.
- 6.3 As detailed in the report BFB was not an Asset of Community Value and had no other status which required an alternative route to disposing of the asset.

7. Human Resource Implications

- 7.1 There are no Human Resource implications as a result of this report; it is acknowledged by senior officers of the Council that the process of leasing BFB became a surprise political issue and that this has caused significant increase in the level of resource needed to complete the transaction and did cause some distress to some Officers involved in the process.

8. Conclusion

- 8.1 The decision to lease BFB for commercial purposes was initially a decision taken by CMT in consultation with the Lead Councillor for Assets following consultation with PRG and ward councillors. However, confirmation of the decision was ultimately taken by full Council in February 2018 as part of the Council's budget process following submission and consideration of a savings bid for the 2018-19 budget. The Council was able to make a decision to lease the asset for commercial purposes as no specific designated status required an alternative approach. The Council followed an open market tender process and leased the property to the highest bidder, demonstrating that it complied with the need to obtain best consideration as required by s123 of the Local Government Act 1972.
- 8.2 The decision-making process resulting in the decision to lease and the choice of tenant followed the procedures set out in the Council's Constitution for commercial leasing of an asset under s123 of the LGA 1972. Had the decision to lease the asset for social, environmental, or economic wellbeing of the area been taken, then a different process would have been followed. The Council has alternative processes and procedures in place to allow it to lease property for social, environmental, and economic wellbeing purposes and can provide examples to councillors of when and which assets have been leased for this purpose.
- 8.3 Concerns have been raised about the leasing process which resulted in the audit review. The main area of concern seems to be regarding the initial decision to lease the asset for commercial purposes rather than for leasing the asset for social, environmental, and economic wellbeing purposes. In order to ascertain which of the Council's assets should be leased for social, environmental, and

economic wellbeing purposes, officers recommend that the Council develops a community strategy and as part of the strategy undertakes an audit of the need for community facilities and the facilities that are available to meet that need in different areas of the borough to identify gaps in provision. This can then lead to the development of a community asset transfer policy, which is recommended by CIPFA in its most recent guidance on asset management in local government.

- 8.4 No process is perfect and there are learning points that can be learned in any process or review. In accepting the findings and recommendations we have acknowledged:
- That the Council's Asset management framework needs to be reviewed and updated and in doing so a more detailed disposal policy agreed formally by Executive
 - That a community strategy and community asset transfer policy should be developed and adopted by the Council
 - That consultation with residents' groups and users of buildings should be undertaken where it is proposed that the Council's operational buildings are to be leased
 - That the Council should better promote the ability for local groups to nominate 'Assets of Community Value' so that assets that are important to the community can be locally listed and the Council are aware of which assets are important to the community
 - That the provision of financial information in informal briefing notes to councillors as part of working groups should be checked by the Council's finance team
 - That the Council's new project and programme governance framework should be used to help document decisions around the review of asset utilisation and assessment of alternative options in order to help document leasing and disposal decisions in the future
 - That a balanced scorecard approach to evaluating bids for property should be implemented to help record the decision-making process
 - That minutes of working group should be clear regarding recommended courses of action

9. Background Papers

None

10. Appendices

Appendix 1: KPMG Report Burchatts Farm Barn

Appendix 2: Burchatts Farm Barn, Terms of reference

Appendix 3: Summary Property Report – Burchatts Farm Barn (November 2016)