

Overview and Scrutiny Committee Report

Ward(s) affected: Friary and St Nicolas Ward

Report of Director of Resources

Author: Claire Morris

Tel: 01483 444827

Email: [claire.morris@guildford.gov.uk](mailto:claire.morris@guildford.gov.uk)

Lead Councillor responsible: Councillor Tim Anderson

Tel: 07710 328560

Email: [tim.anderson@guildford.gov.uk](mailto:tim.anderson@guildford.gov.uk)

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## **Review of the Council's ownership of Liongate House**

### **Executive Summary**

The Council acquired an investment property known as Liongate House in December 2013 for £13million and sold the property in March 2020 for £10.1million, which represented a reduction in capital value of £2.9million. Over the holding period the Council gained a gross income of £5.9million and achieved an internal rate of return (IRR) on its investment of 4.2%. The initial gross yield on investment was 7.54%.

During the acquisition and the disposal of the property the Council sought external professional advice and valuations from reputable RICS accredited property companies. The Council considered many options for the future use of Liongate and undertook a comprehensive marketing campaign to dispose of the property. The sale price of the property has been certified as 'best consideration' (as required by Section 123 of the Local Government Act 1972 in line with the Council's constitution).

Three complaints have been received regarding the Council's holding of Liongate House. Those complaints are detailed within the report. In response to the complaints, terms of reference for an Overview and Scrutiny review of the Council's ownership of Liongate House were agreed with the Chair of the Committee. The report details the questions set out in the terms of reference and provides evidence for the Committee to consider in undertaking its review.

The Council has also referred the complaints to the Royal Institute of Chartered Surveyors (RICS) and asked for advice as to the merit or otherwise of the complaints and in particular whether the professional advice sought by the Council from its advisors, meet professional practice, and therefore, whether there is any evidence that the Council undersold the asset. The Council is currently waiting for a response from RICS and if a response is received prior to the committee meeting it will be circulated to the committee as a supplemental agenda item.

**Recommendation to Executive/ Committee/ Council** (delete as appropriate)

That the Committee review the questions posed in the terms of reference for this review and the evidence presented and determine its conclusions.

Reason(s) for Recommendation:

To undertake an overview and scrutiny review of the Council's ownership of Liongate House

## 1. Purpose of Report

- 1.1 Following freedom of information act requests and a significant amount of informal correspondence, three formal complaints have been received by the Joint Chief Executive and Director of Resources relating to the Council's ownership of 'Liongate House', which was an investment property held by the Council between 2013 and 2020. Two complaints relate to the disposal of the asset and one relates to the acquisition of the asset (see **Appendix 1**). Due to the time lapsed between both the acquisition and the disposal of the asset and the receipt of the complaints, the only mechanism within the constitution to undertake a review is for the Overview and Scrutiny Committee to carry out a review.
- 1.2 The terms of reference of the Overview and Scrutiny (O&S) Committee allow the committee to undertake investigations into such matters relating to the Council's functions and powers as the Committee may consider appropriate. The Committee may also review and scrutinise the performance of, and the decisions made by the Leader, Lead Councillors individually or the Executive collectively and Council officers in relation to individual decisions and over time. Requests for items to be brought to O&S shall be considered with reference to the P.A.P.E.R topic selection tool (PAPER stands for Public Interest, Ability to Change, Performance, Extent, and Replication).
- 1.3 The complaints have been discussed with the Chair of the Overview and Scrutiny Committee who agreed that the Overview and Scrutiny Committee should undertake a review as the matter is deemed to be in the public interest. Terms of reference for the review and therefore this report, were agreed with the Chair of the Committee and are disclosed in **Appendix 2**. The Committee are also invited to consider the performance of the Council and its external property / valuation advisors. Depending on the Committee's deliberations, it may also be able to identify lessons to be learned which will be useful for the future. However, as the asset was disposed of in March 2020, the Committee cannot change any decisions in respect of Liongate.

## 2. Strategic Priorities

- 2.1 Good governance underpins all of the Council's Corporate Priorities set out in the Corporate Plan 2021 to 2025.

### 3. Background

3.1 Liongate House was an office block, acquired by the Council as an investment property in December 2013 for £13million. The property was sold in March 2020 for £10.1million representing a fall in capital value of £2.9million. During the period of ownership (just over 6 years) the Council received £1.3million per annum in rent for the first 9 months of ownership which reduced to £980,000 per annum rental income from September 2014 until the tenant vacated the premises in September 2019. The Council received approximately £5.9million of income during the period of ownership.

3.2 During the period of ownership, as an investment property, the Council was required under accounting practice, to revalue the asset within its balance sheet on an annual basis to reflect the current open market value of the asset. For information, the values at which the asset was included on the Council's asset register and therefore within the Council's balance sheet over the holding period were:

2013-14 purchase £13m  
2014-15 £13.865m  
2015-16 £14m  
2016-17 £14.35m  
2017-18 £14.42m  
2018-19 £13m  
2019-20 £12.15m

3.3 As a material item within the Council's accounts each year, the acquisition cost, annual valuation, disposal value and proceeds of the asset were subject to audit in each relevant year as part of the audit of the Council's statement of accounts. The Council's external auditors over the holding period were (and still are) Grant Thornton LLP.

3.4 At the point of acquisition and at the point of disposal independent, external valuation advice was sought by the Council.

#### **Acquisition process**

3.5 Due to the length of time between the acquisition of the property and the present day, along with the fact that many of the key officers involved in the acquisition process are no longer employees of the Council, the full process has been difficult to ascertain for this report. The period exceeds the various record and data retention periods.

3.6 On 8 November 2012, the then Executive approved a property acquisition report setting out that a fund of £15million was to be created for the purposes of investing in commercial property to generate an income for the Council. The report is shown in **Appendix 3** and sets out the criteria and evaluation matrix that investment opportunities would be assessed against. At the time, any acquisition of property in excess of the budget provision on the approved capital programme

would have required the approval of the Executive. Officers only had delegated authority to purchase property up to the amount on the approved capital programme. The Council's constitution was updated in 2014 as part of the approval of the asset and investment strategy and framework. The updated constitution delegated authority to acquire property up to £12million to the Managing Director (now Joint Chief Executive) and Chief Finance Officer in conjunction with the Leader of the Council and Lead Councillor for finance. However, purchases of property above £12million still require the approval of the Executive.

- 3.7 The decision to acquire Liongate was made by the (then) Managing Director of the Council under delegated authority provided to her under paragraph 24 within the Council's constitution relating to 'urgent matters'. The decision was initially recorded on a delegated authority form dated 17<sup>th</sup> October 2013 (see **Appendix 4**). The delegated authority form approved a capital supplementary budget estimate of £1.816 million because the purchase price exceeded the budget available on the Council's approved capital programme at the time. The budget was £10.827million and the capital supplementary estimate increased it to £12.643million. The matter was deemed urgent because the vendor who was selling the property had called for bids by 23<sup>rd</sup> October 2013.
- 3.8 The delegated authority (DA) form at Appendix 4, includes commentary around the financial consequences associated with the risk that the tenant might exercise their break clause in year 5 and the Council needing to bear the refurbishment costs as a result. The DA form states that even in this 'worst case scenario' the investment asset would still yield an internal rate of return (IRR) of 10.1%. The DA form states that the investment opportunity had been evaluated against the Council's 'approved criteria' for investment as set out in the property acquisition report at Appendix 3. The decision documented on the DA form was made in consultation with the then Lead Councillor for Finance and Assets, Cllr Nigel Manning, the then Leader of the Council Stephen Mansbridge and the fact the decision was urgent had been agreed with the Chairman of the Scrutiny committee.
- 3.9 The initial bid was unsuccessful, as a consequence a further DA form was sought and signed on 14<sup>th</sup> November 2013 and is shown at **Appendix 5**. The second DA form increased the budget again to £13.754million, through approving a further capital supplementary estimate of £1.111million. The total of the two capital supplementary estimates were £2.927million. The second DA form updated the estimates of the IRR stated in the first form for both the scenario where the tenant remained for the length of their lease and in the scenario of the tenant breaking their lease at the 5 year break point.
- 3.10 Heads of terms for the acquisition were signed on 15<sup>th</sup> November 2013. The asset was valued at the point of purchase by Jones Lang LaSalle (JLL), their valuation report from December 2013 is attached at **Appendix 6**. JLL valued the asset at £13million in December 2013. At the point of acquisition, the tenant had agreed a full repairing and insuring reversionary lease for the entire property for a term of 10 years commencing 29 September 2014, with a tenant's option to break on 28 September 2019.

- 3.11 As part of the valuation approach, starting on page 46 of their report (Appendix 6), JLL provided a discounted cashflow analysis of two scenarios. The first scenario analysed the base case scenario of the tenant continuing to occupy the premises for the whole of their 10-year lease. The internal rate of return (IRR) of the first scenario was found to be 8.8%. The second scenario (on page 47) looked at the IRR if the tenant exercised their break clause and the Council was required to refurbish and re-let the premises on the break date. This second option included an assumption relating to a void period and needing to offer a period of rent free occupation as an incentive to a new tenant. The IRR in this second scenario was found to be 7.78%.
- 3.12 The purchase of Liongate completed on 13<sup>th</sup> December 2013. As the decision to acquire the property had been taken under delegated authority the matter was reported to the Executive on 7<sup>th</sup> January 2014.
- 3.13 At the time, and to this day, the Council has a Property Review Group (PRG) which is an officer / Councillor working group of the Executive. PRG minutes from September 2013 to December 2013 have been reviewed. The acquisition of Liongate was mentioned in the minutes of the meetings held in November 2013 and December 2013 but no mention of consideration of the acquisition by the PRG is documented within the PRG minutes for the 17 October 2013 meetings (see **Appendix 7**).

#### **Disposal process**

- 3.14 In October 2018, Officers commissioned an options report from Lambert Smith Hampton (LSH) on what the Council's options may be regarding the future use for Liongate, in the scenario that the tenant might exercise the break clause in their lease. The options report is attached at **Appendix 8**. The options report identified a range of options for future use in the event of the tenant exercising their break clause. The report reviewed the relative merits of each option and provided high-level range values for each and their view on demand/risk factors. To inform this a site survey, initial Flood Risk assessment and pre-planning advice were also commissioned. The options and their associated values were:
- Refurbishment by GBC for continued office use - £4.0 - £5.0 million (additional detail on this option was requested specifically to evaluate the option of the Council moving from Millmead to Liongate House for owner occupation. The high level feasibility report for this is shown in **Appendix 9**)
  - Sale for residential with prior approval for Permitted Development (PD) - £8.5 - £9.5 million
  - Sale for residential use - £7.0 - £8.0 million
  - Sale for retirement living/care home – Extra Care: £8.5- £9.5 million, Retirement: £7.5- £8.5 million
  - Sale/pre-let as a hotel - £5.0 - £5.5 million
  - Sale for retail use - £5.0 - £5.5 million
  - Sale for self-storage use - £4.0 - £5.0 million

- 3.15 The options report was discussed at the Property Review Group (PRG) on 16<sup>th</sup> October 2018, 20<sup>th</sup> November 2018 and 18<sup>th</sup> December 2018 (see **Appendix 7**). The December 2018 meeting concluded that further flood risk assessment work should be carried out and pre-application advice should be sought. Further updates were presented to PRG on 19<sup>th</sup> February 2019, 19<sup>th</sup> March 2019 and 16<sup>th</sup> April 2019.
- 3.16 As noted in paragraph 3.13, PRG is an officer/councillor working group of the Executive. Prior to the election in May 2019, Cllr Nigel Manning, Lead Councillor for Finance and Assets and Cllr Caroline Reeves, Leader of the Opposition and (at the time) Chair of the O&S Committee were members of the group. Following the election in May 2019, the Councillor members of PRG were Cllr Joss Bigmore, Lead Councillor for Finance and Assets and Cllr Caroline Reeves (Leader of the Council).
- 3.17 The tenant notified the Council that they intended to exercise their break clause in March 2019 and vacate the property in September 2019. Officers notified the PRG that the tenant had exercised the break clause in their lease in April 2019. Further updates were provided to PRG in May 2019 and June 2019. Following the election, officers provided PRG with a further briefing and re-cap of the options report that had been previously received. An update on the pre-planning advice (which had not been favourable) and the flood risk assessment work was also provided to the June 2019 meeting. Further discussions were held at PRG in July and August 2019.
- 3.18 A copy of the pre-application advice received from the local planning authority in March 2019 is attached at **Appendix 10**. The advice raised concerns about the site being designated as a strategic employment site within the local plan and its location within flood zone 3b (where residential development would normally not be permitted). The advice stated that as a consequence of these two facts there would be an 'in principle objection' and that it would be unlikely that prior approval for residential use would be granted. In the conclusions, the planning advice states that '*residential uses in flood zone 3b are unsuitable and would not be supported*'.
- 3.19 In September 2019, in consultation with the Lead Councillor for Finance and Assets, and following months of discussion at PRG, Officers commissioned LSH to market the property on an 'any-bids' basis. A 'for sale' board was erected outside of the property and LSH produced and released particulars to investors/developers. The property was openly marketed on the LSH website and other key property web sites such as Rightmove, Zoopla, Co-star etc (see **Appendix 12** in particular page 3 which details the marketing process).
- 3.20 The revised flood risk assessment was finally received by the Council in October 2019 (**Appendix 11**) and the results discussed with PRG on 15<sup>th</sup> October 2019. The conclusions of the report confirmed that whilst the building is located in flood zone 3, it was outside of the functional floodplain and that only an area of car parking to the northern end of the site was within the functional floodplain and therefore prone to fluvial (river) and surface water flooding. The report found the southern end of the site, where the building was located was at low risk from

- fluvial and surface water flood risk. The report goes on to state that as the minimum floor levels for residential are raised, the proposed change of use to residential could be considered appropriate but that any proposed development will need to implement measures to 'wet proof' the building access and improve flood resilience. The report states that a flood management plan would be needed.
- 3.21 In October 2019, 65 potential purchasers expressed an interest in the property. Of those, 39 potential purchasers were granted access to the LSH 'data room' where they were granted access to the detailed sale particulars such as various surveys, title reports, pre-planning advice and both the initial and revised site specific the flood risk assessments etc.
- 3.22 In November 2019, LSH invited bids from all interested parties with access to the data room. Twelve bids were received (see **Appendix 13**) for a variety of uses with a variety of values. Officers presented a report to Executive in November 2019 (see **Appendix 14**) which provided the background and detail of the site, options considered, the planning advice, updated site specific flood risk assessment and detailed the bids received (**Appendix 13**).
- 3.23 Whilst the options considered in the Executive report mainly focussed on disposal of the property, options for the Council to refurbish the property for owner occupation (option (a)(vi) and the Council developing the site for residential use with prior approval for permitted development (option (c)(vi) were covered and discussed within the report. In relation to the Council developing the site itself, the Executive were advised that the risks relating to the construction and management of the building contract and letting/sales risk were prohibitive. Further detail around risks in retaining the asset were set out in section 7 of the report at **Appendix 14**. Section 8 of the report detailed the financial implications; of particular concern was the loss of rental income of £980,000 per annum and the empty premises business rates liability of £125,000 which would have been incurred from the point the property had been vacant for 3 months or more. As such, the loss of income and costs could have potentially cost the Council around £1.1million per annum if the property was retained whilst options for the Council to refurbish or develop the property were explored further in addition to the cost of actually undertaking the development or refurbishment. It is also worth noting that the proposal to redevelop the site was not a project or priority in the Council's Corporate Plan 2018 to 2023 and as such no capital budget had been allocated to a redevelopment project. The report concluded that disposal of the property was the best option and made recommendations accordingly.
- 3.24 The report recommendations delegated authority to the Corporate Property Manager to improve the bids and negotiate detailed terms before final disposal. All recommendations within the report were agreed. At the time the report was exempted from publication due to the commercial sensitivity of the decision. Due to the passage of time, the report is no longer deemed confidential. In addition, the report has been released under the Freedom of Information Act and the disposal price was published in the Council's statement of accounts for 2019-20 and with the Land Registry.

- 3.25 Best and final bids were sought by LSH and discussed with the Council's internal officer level, Investment Fund Property Management Group (IPFMG). Following advice from LSH and in consideration of the risks detailed on section 7 of the Executive report at **Appendix 14**, IPFMG decided to accept unconditional bids due to the significant risks around the delivery of bids that were subject to planning and the financial implications to the Council of any delay in disposal. The Corporate Property Manager consulted with the relevant Lead Councillor and relevant officers (as per the Executive recommendation) to take a decision under delegated authority to dispose of the property. The disposal decision was recorded on a 'delegated authority form' (see **Appendix 16**). The decision to dispose was taken following receipt of a report from LSH detailing that in their professional opinion, the disposal price of £10.1million was best consideration for the property (as required by Section 123 of the Local Government Act 1972) following a comprehensive, transparent and competitive bidding process (see **Appendix 12**).
- 3.26 The accepted bid of £10.1million was submitted by BSD. BSD were chosen because their bid was unconditional and they were a cash buyer (i.e., their bid was not reliant on raising finance from a third party). Officers were confident that BSD were a credible buyer as they had inspected the property on 3 occasions with their professional team during the bidding process. Although their bid was unconditional on planning, upon confirmation of being confirmed as the preferred bidder, BSD submitted a planning application for permitted development rights. The first application, reference 19/W/00109 and 19/W/00110 was refused on 29<sup>th</sup> January 2020. A second application was submitted on 4<sup>th</sup> February 2020 (reference 20/W/00021 & 22) which was approved on 6<sup>th</sup> March 2020 following a letter from the Environment Agency received on 4<sup>th</sup> March 2020. The sale of the property also completed on 6<sup>th</sup> March 2020. All documents associated with the planning applications are publicly available on the Council's website.
- 3.27 The Council approved an Asset Management Strategy and Framework in 2014 which sets out the policy on how the council manages assets including assessing whether assets still meet the investment criteria and should be considered for disposal. The Council's constitution part 4 financial procedure rules section C.5.2 state that land and buildings need to be disposed of in conjunction with the relevant director, Chief Finance Officer (CFO), Lead Specialist – Legal and the Lead Councillor for Finance. Section C.6.2 of the financial procedure rules require the Council to achieve best consideration and state that all disposals should be at market value unless otherwise agreed by the CFO in consultation with the Leader and Lead Councillor for finance. The procedure rules also state any disposals over 0.2Ha need to be approved by the Executive (Section C.6.2 vi)
- 3.28 Following the internal audit of the leasing of Burchatts Barn a recommendation was raised that the Council should have a specific Land & Property Disposals Policy and Guidance Document. The policy was approved by the Executive in September 2021, the disposal of Liongate preceded the adoption of this policy and therefore falls under the asset management framework and constitutional requirements outlined in paragraph 3.27.

#### 4. Complaints received

- 4.1 Since the disposal, the Council has received a number of FOI requests, mainly from the same individual relating to the disposal of Liongate House. In addition to the FOI requests, Cllr Paul Spooner asked a series of questions to the Lead Councillor at the Council meeting in July 2021. A copy of the questions and the Lead Councillors response was set out in the order paper (see **Appendix 15**), in addition the order paper disclosed two appendices relating to the answers provided:
- (a) The revised site specific flood risk assessment discussed in paragraph 3.20 and attached at **Appendix 11**
  - (b) The report from LSH detailing that in their professional opinion the disposal proceeds were best consideration for the property as discussed in paragraph 3.19 and 3.25 and attached at **Appendix 12**
- 4.2 Following further email exchanges between Geoff Davis, Cllr Spooner and Cllr Bilbe and various officers and councillors, two formal complaints were received from Geoff Davis and Cllr Bilbe addressed to the Joint Chief Executive and Director of Resources (see **Appendix 1**). On consideration of the complaints, the terms of reference at **Appendix 2** were drafted by the Director of Resources and approved by Cllr Spooner in his role of Chair of the Overview and Scrutiny Committee.
- 4.3 During discussion of the terms of reference, the Director of Resources contacted the Council's internal and external auditors for advice and to ask if they would consider undertaking an investigation or audit along the lines of the complaints received.
- 4.4 The Council's external auditor confirmed that they had audited the disposal of Liongate House as part of their audit of the 2019-20 statement of accounts for the Council, they had not found any issues or concerns with the valuation or the disposal and had not raised any recommendations either relating to the transaction in the accounts or as part of their value for money opinion. As the audit for the 2019-20 accounts was complete, the audit opinion signed and the annual audit report had been reported to corporate governance and standards committee they would not consider re-opening their audit. They also noted that the period of time for which members of the public could raise objections to any item within the Council's accounts for 2019-20 or any item of income or expenditure by the Council for that financial year had passed and it was not possible for the complaints to be looked at by the auditors as a public objection to the accounts or value for money conclusion. The same applies to the 2013-14 accounts which was the year of acquisition.
- 4.5 The Council's internal auditors re-iterated that the disposal would have been material to the Council's accounts for 2019-20 and therefore should have been audited as part of the accounts audit. Without further formal valuation evidence to the contrary (which has not been forthcoming from the complainants) it would not be possible to assess whether the asset had been undervalued, particularly if

it had been sold following an extensive open marketing campaign. Any subsequent valuation now of a transaction that took place in 2019-20 would have to be carefully positioned against the extant professional and the market at the time. The internal auditors went on to state that the length of time between the transactions and the complaints being raised would make any review difficult. They stated that any audit of the transactions would be limited to the policies and procedures the Council had in place at the time and whether the Council followed them, however that this was not what the complaints were focussed on.

- 4.6 The nature of the complaints about both the acquisition and the disposal focus on the valuation of the asset at each time and the speed of the decision making and consideration of risks. The question about the speed of the decision is a subjective question which the Committee will need to form a judgement on. In order to assess whether the valuations reflected the true market value of the assets, the Director of Resources has requested the help and support of the Royal Institute of Chartered Surveyors (RICS) to advise the Council. RICS are an independent body and are the regulatory body for the property industry. RICS will be able to advise the Council whether the valuations have been undertaken in line with their professional standards.

## **5. Matters for Overview and Scrutiny (O&S) Committee Consideration**

- 5.1 As per the terms of reference set out at Appendix 2, the O&S Committee is invited to consider and pass comment on the following questions. Officers have provided for the committee references to the relevant evidence that the committee should take into account in its deliberations.

### **1) *Did the council's decision to acquire Liongate apply its proper processes and adequately consider all risks and mitigations appropriately?***

- 5.2 The committee may like to refer to the information in paragraph 3.5 to 3.12 in passing comment. As noted in those paragraphs, the decisions were made under delegated authority due to urgency and reported to the Executive after the acquisition had taken place. As the decision had been made under provisions for urgency, the decision was not able to be subject to the 'Call-in' provisions of the O&S committee. The decision also required two capital supplementary estimates as the budget on the approved capital programme was insufficient to cover the purchase cost. External independent valuation advice was sought as detailed in the purchase report at Appendix 5 and as noted in paragraph 3.11 the risk of the tenant exercising their break clause in the lease was considered.

### **2) *Noting the speed of the decision, is there evidence that the council did not adequately consider the options or follow correct procedures?***

- 5.3 Again the committee may like to refer to the information in paragraph 3.5 to 3.12 in passing comment. The acquisition process occurred over a period of about 2 months (October 2013 to December 2013). The matter was considered using urgent delegations under the constitution and there is no documented evidence that the matter was discussed at the Council's Property Review Group until November 2013.

**3) Did the council's decision to dispose of the asset apply its proper processes and adequately consider all risks and mitigations appropriately?**

- 5.4 The procedures in place at the time were set out in the Council's asset management framework and Constitution as detailed in paragraph 3.27. The decision to dispose was made by the Executive following a report in November 2019 which set out the full range of options considered. The Executive delegated authority to the Corporate Property Manager to negotiate and improve the bids and then make the final decision to dispose in consultation with relevant councillors. The final decision was informed by the best consideration report from LSH as required by the Constitution and was documented on a DA form.
- 5.5 At the time the decision made by the Executive, was not subjected to 'call-in'. The O&S procedure rules set out within the constitution state that when a decision is made by the Executive or Leader or an individual Lead Councillor or a key decision is made by an officer with delegated authority, the decision can be 'called-in' for consideration by the O&S Committee within 5 days of the decision being made. This provision was not used.

**4) Are the Council's processes appropriate?**

- 5.6 This is a matter for the Committee to consider. Noting that an updated land and property disposal policy and guidance has already been approved in 2021, if the Council's processes are not deemed appropriate, what improvements would the Committee recommend?

**5) Noting the speed of the decision, is there evidence that the Council did not adequately consider the options or follow correct procedures?**

- 5.7 The Committee may like to consider the information in paragraphs 3.14 to 3.28 and the information within the relevant appendices in forming its comments. The decision to dispose of the asset started with the commissioning of an options report in October 2018 and the final decision to dispose was considered by the Executive in November 2019. The final decision was then made under delegated authority in December 2019 although the sale then took until March 2020 to complete. The process from start to end was approximately 17 months. A significant range of options were evaluated during the period and a range of professional advice sought. The property was comprehensively marketed in an open market campaign (as documented in the best consideration report at **Appendix 12**) and bidders given full access to information the Council held about the property, including surveys, planning advice and flood risk assessments. The options and decision was discussed at PRG multiple times over the 17 month period. Throughout the 17-month period, the Council received external professional advice on all aspects of selling the property from LSH.

**6) Did the decision adequately consider potential flood risks and mitigations?**

5.8 The Committee may like to consider the information in paragraphs 3.14 to 3.28. Flood risk assessments were commissioned, received and discussed at PRG. As discussed in the Order paper for the July 2021 Council meeting, PRG took the decision that given the issues around planning and flood risk the Council would not try to obtain prior approval but to conduct a comprehensive marketing campaign on an 'any bids' basis. Potential purchasers were given access to the flood risk assessments and planning advice within the 'data room' provided by LSH prior to bids being invited. By providing the information to the bidders the Council was able to obtain the full value for the site without the risk, time and cost of applying for PD approval itself. The Council received 12 competitive bids for the property initially and then selected the top bidders to submit final 'best and final offers'.

**7) With reference to the Gross Development Value for permitted development being £20million stated in the Options appraisal report from LSH, is there evidence that the Council's external valuation advice and marketing resulted in the council under-selling the asset?**

5.9 The Committee may like to consider the information in paragraphs 3.14 to 3.28 and the information within the relevant appendices in forming its comments. The gross development value is a measure that does not take into account the costs of development and therefore cannot be directly compared to the sale price as potential purchasers of the site would have evaluated their development costs as well as development values in forming their bids. Once estimated costs of development are accounted for, the residual land value or sale price was valued at £8.5million to £9.5million by LSH. The property was eventually sold for £10.1million which exceeded the expectations in the options report. The sale took place following a comprehensive and open marketing campaign which was run by LSH, using various leading property websites and then a competitive two-stage bidding process. A best consideration report, as required by S123 of the Local Government Act 1972 (which specifically prohibits the sale of public assets at an undervalue unless consent is sought) has been provided by LSH and is shown at **Appendix 12**.

**General Adequacy of the valuation advice provided to the Council**

5.10 Given the formal complaints that have been raised, the question as to whether the Council's external valuation advice and marketing campaign has resulted in the Council under selling the asset has been referred to the Royal Institute of Chartered Surveyors (RICS) as they are the regulatory body for the sector and are able to advise the Council on whether the Council's external advisors followed proper professional practice and standards and therefore whether there is any merit in the complaints that have been received. In addition to assessing the adequacy of the valuation advice surrounding the disposal, RICS have also been asked to look at the advice provided to the Council for the acquisition of the property.

5.11 The RICS investigations team has opened 4 investigations into the matter (2 into the acquisition and 2 into the disposal), they have reviewed the evidence provided by the council. RICS have undertaken to provide the outcome of their investigations in a letter from the Head of Regulation to the Council week commencing 18<sup>th</sup> July which will be circulated to the committee following the meeting. The investigator has verbally updated officers on her provisional findings (which are subject to the review of the Head of Regulation). The verbal draft findings can be summarised as follows:

- **Acquisition;** the investigator cannot find any evidence that the valuation of £13million was over optimistic. The valuation report meets RICS standards and there is evidence that alternative scenarios around the tenant exercising their break clause were considered along with the disadvantages of acquiring the site. The investigator made the point that it would not now be possible for any second valuer to carry out a valuation due to the time that has lapsed between the acquisition and today. She also stated that in 2013, a professional valuer would not have been able to predict the potential fall in capital value of the property as a result of the pandemic and significant changes in the office market resulting from changes in working practices.
- **Disposal;** the investigator looked at the main areas of concern raised by the complainants and has concluded that all options were thoroughly considered in the options report provided by LSH including residential development. The investigator has reviewed the pre-planning and flooding advice, provided to the council and subsequent planning applications along with the question around overage. She has noted that the Council did not wish to take the planning risk and accepted an unconditional bid following a comprehensive marketing campaign. She has concluded that there is no evidence of the value being understated or that there was any misconduct or incompetence in the valuation advice provided to the Council.

5.12 The investigator from RICS has provisionally concluded that there is no evidence to uphold the complaints and as such will recommend to the Head of Regulation that the investigation cases are closed with no further action. She informed officers that there is no right of appeal to RICS decision once it has been confirmed.

## **6. Financial Implications**

6.1 There are no financial implications arising as a result of this report. The cost of producing this report has been absorbed within existing resources. The investigation being carried out by RICS is at their cost as the regulator for the property industry.

6.2 In order to assess whether the Council's investment in Liongate over its holding period was value for money, a cashflow analysis has been undertaken as follows:

Date:	08/02/2014 - 07/02/2015	08/02/2015 - 07/02/2016	08/02/2016 - 07/02/2017	08/02/2017 - 07/02/2018	08/02/2018 - 07/02/2019	08/02/2019 - 07/02/2020	08/02/2020 - 06/03/2020
Rental	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£80,547.95
Acquisition price	-£13,000,000						
Acquisition costs	-£754,000						
Sale price							£10,170,000
sale costs							-£177,975
Dilapidations							£700,000
Interest payments							£20,630
Gross income	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£80,547.95
Pre-Finance NetCashflow	-£12,774,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£980,000.00	£10,772,572.95

6.3 Total gross income over the holding period was £5.9million. The above cashflow results in the following key property metrics:

Purchase price	<b>£13,000,000</b>
IRR	<b>4.2%</b>
Exit yield	<b>0.79%</b>
(Gross) Initial yield	<b>7.54%</b>
(Net) Initial yield	<b>7.11%</b>
Acquisition costs	<b>£754,000.00</b>
Deposit interest	<b>£435.47</b>
Late Payment Interest	<b>£20,194.12</b>

6.4 In the 2012 Property Acquisition report contained at **Appendix 3** (which was the prevailing strategy under which the Council acquired the asset) paragraph 5.14 (1) states that the initial yield of a property should achieve a minimum of 4%. The

actual initial yield was above 7%. At the time, the Council did not state a minimum internal rate of return (IRR) required from its investments. Later iterations of the asset investment strategy set target IRR of 5%.

## **7. Legal Implications**

- 7.1 Under section 9F of the Local Government Act 2000 Overview and Scrutiny has the power to review or scrutinise decisions made, or other action, taken and to make reports and recommendations.
- 7.2 Article 8 of the constitution dated 4 April 2022 sets out the Terms of Reference of Overview and Scrutiny Committee including the review and scrutiny of the performance of and decisions made and making recommendations arising from the outcome of the scrutiny process. Following any investigation or review the Committee may prepare a report including recommendations for submission to the Leader/Executive and Council as appropriate and shall make these public in accordance with the Overview and Scrutiny Procedure Rules at Part 4 of the constitution.
- 7.3 The legal implications of the decisions which have been the subject of this review were considered within the relevant sections of the reports prepared in relation for both the acquisition and disposal at paragraph 7 of Appendix 3 and paragraph 9 of Appendix 14.

## **8. Human Resource Implications**

- 8.1 There are no human resource implications arising as a result of this report. Many of the officers involved in the acquisition and the disposal of the property have since left the Council's employment.

## **9. Equality and Diversity Implications**

- 9.1 There are no equality or diversity implications arising as a result of this report.

## **10. Climate Change/Sustainability Implications**

- 10.1 There are no climate change implications arising as a result of this report.

## **11. Conclusion**

- 11.1 The Council acquired an investment property known as Liongate in December 2013 for £13million and sold the property in March 2020 for £10.1million, which represented a reduction in capital value of £2.9million. Over the holding period the Council gained a gross income of £5.9million and achieved an internal rate of return (IRR) on its investment of 4.2%. The initial gross yield on investment was 7.54%.
- 11.2 During the acquisition and the disposal of the property the Council sought external professional advice and valuations from reputable RICS accredited property companies. The Council considered many options for the future use of

Liongate and undertook a comprehensive marketing campaign to dispose of the property. The sale price of the property has been certified as 'best consideration' (as required by Section 123 of the Local Government Act 1972 in line with the Council's constitution).

- 11.3 Three complaints have been received regarding the Council's holding of Liongate house. Those complaints are detailed within the report and evidence has been provided to the committee for the committee to determine whether any of the Complaints has any merit.
- 11.4 The Council has also referred the complaints to the Royal Institute of Chartered Surveyors (RICS) and asked for advice as to the merit or otherwise of the complaints and in particular whether the professional advice sought by the Council from its advisors, meet professional practice, and therefore, whether there is any evidence that the Council undersold the asset. The Council is currently waiting a response from RICS and if a response is received prior to the committee meeting it will be circulated to the committee as a supplemental agenda item.

## **12. Background Papers**

There are no background papers

## **13. Appendices**

- Appendix 1 – Copies of Complaints received
- Appendix 2 – Terms of reference for the O&S review agreed by the Chair of O&S Committee
- Appendix 3 – Property Acquisition report to Executive November 2012
- Appendix 4 - Delegated Authority Form 17<sup>th</sup> October 2013
- Appendix 5 – Delegated Authority Form 14<sup>th</sup> November 2013
- Appendix 6 – Purchase report from JLL
- Appendix 7 – Extracts from PRG Minutes
- Appendix 8 – LSH Options report December 2018
- Appendix 9 – LSH Refurbishment and Fitout Cost Assessment
- Appendix 10 – GBC Planning Pre-application Advice
- Appendix 11 – Revised site specific Flood Risk Assessment from Hydrock
- Appendix 12 – Best consideration report
- Appendix 13 – Schedule of bids received (previously exempt from publication)
- Appendix 14 – GBC Executive report on Disposal November 2019 (previously exempt from publication)
- Appendix 15 – Council Order paper July 2021
- Appendix 16 – Delegated Authority Form for Disposal December 2019