

MEMBERS' INQUIRY WORKING PARTY (SCRUTINY)		
COMMERCIAL PROPERTY DISPOSAL	Classification Public	Enclosures Appendix 1 Representations raised
	Ward(s) affected All	Appendix 2 Questions posed

1. FOREWORD BY THE CHAIR OF THE MEMBERS' INQUIRY WORKING PARTY – COMMERCIAL PROPERTY DISPOSAL: COUNCILLOR JAMES CANNON

1.1 The working party was set up to look at the Council's commercial property disposal process. We met on 3 occasions on 27 February, 6th and 14th March to receive written and verbal evidence. On 15th March, the working party met to reach its conclusions and to agree recommendations.

I am grateful to those who provided written and verbal evidence. The time that has been spent in this activity both by members of the public and the officers of the council has been substantial. I am also thankful for the positive and calm manner in which the evidence was presented especially by those with strong emotions and feelings of frustration about the situation.

I would also like to thank members of the working party for their commitment, despite their other obligations, over a concentrated period at short notice.

I am especially pleased that there was unanimous agreement on the majority of the recommendations. The only exception concerned the issue of the need for a further enquiry. Councillor Boff believes strongly that this inquiry should continue: the rest of the working party believes that the first meeting of the new Overview and Scrutiny Board in the next council should determine whether this is necessary. Whatever happens, a substantial collection of basic evidence has been collected and consolidated should further reviews take place.

The substantive recommendations are practical and relevant. It is up to the relevant Officers and the executive to explore the consequences of these recommendations but it is our view that they will improve the running of an open and transparent disposal operation.

Throughout this review it has been stressed that any evidence of wrongdoing should be passed to the LBH Audit and Anti Fraud team, the District Auditor or the Local Ombudsmen and in the case of any alleged criminal activity the Police.

I commend these recommendations to the Council.

2. INTRODUCTION

2.1 Following significant local discussion relating to matters of commercial property disposals conducted predominantly over the period 1999-2003, and the subsequent triggering of a Council Motion, the matter of commercial property disposals conducted by the London Borough of Hackney was referred to the Governance and Resources Scrutiny Commission for their consideration.

2.2 Motion from Council;

“This Council recognises that its long-held policy of offering first refusal to long-standing commercial tenants continues to be its policy. This Council notes that some small businesses have in the past been unsuccessful at purchasing properties at auction, having not taken up the option of buying prior to auction. The Council regrets the outcomes that have resulted for some individuals from property disposals several years ago which were forced upon this Council by its financial collapse in 2000/01. The Council notes that this course of action was agreed by the Conservative and Labour Groups at the time. This Council notes that there have been many independent investigations including by the police, Ombudsman and District Auditor, but that despite this there remains publicly expressed concern about the processes followed. There should now be an urgent member level review into the outcomes of this policy and a suspension of property sales until this has been concluded. The Council refers this proposal to Governance and Resources Scrutiny Commission for urgent consideration.”

Proposed: Jessica Crowe

Seconded: Mayor Pipe

2.3 At the Governance and Resources Commission meeting on 20/2/06 two issues were considered;

- 1) The need for an urgent member level review
- 2) Whether there should be a suspension of property sales.

Cllr Cannon (the Chair) suggested to Members of the Governance and Resources Scrutiny Commission that a member level review should be held over the next four weeks and completed before the next meeting of the Overview and Scrutiny Board on March 20th. He advised colleagues that draft Terms of Reference circulated to Members of the Scrutiny Commission had already been considered and broadly endorsed by the Overview and Scrutiny Board.

2.4 The Governance and Resources Scrutiny Commission established a Members Inquiry Working Party, comprising of Cllrs James Cannon, Andrew Boff, William Hodgson (a Queensbridge Ward Councillor) and Elaine Battson (A Dalston Ward Councillor). The findings would be reported to a meeting of the Governance and Resources Scrutiny Commission before being reported to the last Overview and Scrutiny Board of the municipal year 05/06 on 20/3/06.

2.5 The Governance and Resources Scrutiny Commission determined not to recommend to the Executive suspension of property sales during the period of this Members' Inquiry.

2.6 Written submissions were encouraged from interested parties and an article publicising the review was placed within the Hackney Gazette. In addition question forms were circulated at meetings 1 and 2 of the Members Inquiry in order for members of the public to submit any additional questions.

2.7 The Terms of reference for the Working Party's investigation were;

To initially determine;

- The need for a Member led review into the outcomes of the Borough's property disposals policy.
- Should a review take place to decide its form, and over what timescales; and
- If during such a review whether property sales should be suspended

To consider the Council's present process in respect of property disposals.

To provide opportunity for the public to express their views.

To make recommendations, as may be appropriate, in respect of;

- The Council's procedures and practices for property disposal
- Any future work that Members may wish to see undertaken.

3. SUMMARY & RECOMMENDATIONS

During this Scrutiny Inquiry, the Working Party has discovered much about the way the Council's Commercial Property Disposals Policy now operates and the effects that past practices and procedures have had on some members of the community as detailed within submissions brought to the Working Party's attention. Council documentation and statements have also been obtained in respect of such submissions

Recommendation One

The Working Party recommends that the Council undertake what is necessary to ensure that their appointed internal auditors are able to declare as soon as possible and by no later than 31/12/06 compliance with all recommendations (high, medium and low priority) contained within the internal auditors report as presented to this Working Party and that the conclusions of this exercise be reported to Members through an appropriate Council Committee.

Recommendation Two

The Council should demonstrate to Members through an appropriate Committee that adequate, robust and thorough record keeping and monitoring of contracts made with partner organisations takes place.

To this end the Overview Scrutiny Board should consider establishing a regular reporting mechanism that creates a role for Members to regularly review the administration of third party contracts as presently takes place, for example, with the Learning Trust.

Recommendation Three

This Working Party recommends that LBH Property Services produce a standardised information pack which details the Council's property disposals procedures. The overriding aim should be clarity and transparency at all times.

This documentation should be circulated to individuals affected by any sale of a Council owned property. This document will also signpost options for obtaining independent advice in addition to providing an explanation of the Council's complaints procedure. Such documentation should be made readily accessible to the public.

Recommendation Four

This Working Party wishes to make a number of recommendations in respect of Rent Reviews;

- a) Rent reviews should be completed on time, and at regular and pre-defined intervals, the Council should ensure that it has a policy that explains clearly its undertakings in these areas. Properties should not be sold until outstanding rent reviews are completed.
- b) Any current and outstanding rent reviews applicable to properties in which LBH retains a freehold should be completed as a matter of priority
- c) Officers should devise a mechanism for reporting compliance with its own rent reviews policies to the relevant Executive Member.
- d) The outturns of points a-c should be reported to the Governance and Resources Scrutiny Commission by no later than December 2006.

Recommendation Five

This Working Party believes that communication with leaseholders should be reviewed.

If someone other than the leaseholder approaches the Council with an offer for a freehold owned by the Council or if a disposal of property is initiated by the Council, the leaseholder must be informed (this should be documented on file). The leaseholder should be asked for their observations and whether they are prepared to make an offer on the property.

The Corporate Property Working Group should consider any leaseholder comments from the suggested processes detailed above and refer to them in any disposal report put before Cabinet.

In such circumstances the Council should seek at all times to make it clear to existing leaseholders that it aims to be supportive in any bid they may submit for the freehold providing they can meet the Council's obligations to obtain best consideration.

Recommendation Six

This Working Party believes that the processes set out in recommendation five should also apply to situations where LBH are selling or intend to explore the prospect of selling the freehold of land adjacent to properties where existing leaseholders reside.

Recommendation Seven

This Working Party recommends that a feasibility study is undertaken by LBH in order to set out for Cabinet the available options for resolving the present situation affecting a number of properties located on Dalston Lane.

Options that should be brought forward for Cabinet consideration include;

- a) Mechanisms available to the Council to utilise (excluding Compulsory Purchase Orders) enforcement powers that will ensure the suitable upkeep and regeneration of these properties so that they are both kept and put to a use considered suitable for properties located within an LBH designated conservation area.
- b) Compulsorily Purchasing the properties in Dalston Lane in order to ensure, by whatever measure the Cabinet considers appropriate, that these properties are both kept and put to a use considered suitable for properties located within an LBH designated conservation area.

Recommendation Eight

The Working Party recommends to Cabinet that where liability for loss can be proven and is accepted by the Council, that provision of compensation to affected leaseholders should be considered.

If it is established that contracted agents of the Council are found to have contributed to adverse affects on leaseholders against the terms set out within their contractual arrangements this should also be taken into account

Recommendation Nine

The Council's Property Services Department should work with leaseholders adversely affected by the Council's property disposal policy with a view to exploring opportunities as may be available for supporting their search for alternative premises (offering reasonable assistance in respect of relocation).

Recommendation Ten

That the Overview and Scrutiny Board review this report at its first full meeting of the 06/07 municipal year in order to give consideration into whether further investigations should be made in respect of the matters addressed herein.

Councillor Andrew Boff held a minority view within the Working party that a recommendation should be brought forward that the work of this Members Inquiry automatically continue within the new Council.

4. COMMENTS OF THE FINANCIAL CONTROLLER

- 4.1 The recommendations put forward in this report concerning Council processes are supported as they will ensure that there are robust and transparent procedures in place for commercial property transactions. In particular finance supports the need for regular rent reviews as outlined in recommendation 4 as this will maximise rental income to the Council.
- 4.2 In respect of recommendation 8 the Council should exercise caution in offering a route for compensation as this should only be considered on a case by case basis.

5. COMMENTS OF THE MONITORING OFFICER

- 5.1 Subject to our comments at (2) below regarding Recommendation 8, the Recommendations 1 to 10 are supported which will ensure the Council has robust practices and procedures so it can properly account for its actions as a statutory authority and effectively deal with enquiries from the public, the Local Ombudsmen, the District Auditors, and all those it is accountable to.
- 5.2 Recommendation Eight - advocates a system of providing compensation to leaseholders if liability is accepted by the Council. The Council should be cautious about offering a route for compensation. The Council should consider the following:-

(i) Legal liability will only arise in relation to the leaseholders who can prove a breach by the Council of some clause or other provision (such as in their leases). Should any leaseholder advance such a claim the proper course will be for the Council's Property Services in conjunction with Legal Services to assess the merit of such a claim. If a view is taken that a given claim is well made out then discussions would as a matter of standard practice be had with the leaseholder or their representative to resolve it on which could well be on a commercial basis. This would have to be done on a case by case basis to avoid payments to leaseholders who, upon examination, have no basis for complaint.

(ii) The Council should not for the purposes of this report commit itself to pay compensation to those who can 'prove' loss: by definition a leaseholder can only 'prove' entitlement through the court process (or arbitration where available). This is of course can be costly and time consuming for all concerned. The best course in relation to the various leaseholders is to commit to consider each particular case on its merits as said and determine the best response which may (but will not necessarily) be a commercial one.

6. FINDINGS

- 6.1 This Working Party received evidence from a variety of sources throughout the course of its investigation. The findings, as documented below, are not intended to fully replicate every piece of evidence received by the Working Party. Extensive information as submitted to the Working Party can be found recorded and documented in the minutes and agendas of the meetings.

The London Borough of Hackney's response to all individual questions posed prior to 14/3/06 both at public meetings and in written submission is appended to this report

6.2 *Evidence received from interested parties*

6.2.1 Mr Shuter

Mr Shuter explained to Members that he believed approximately 600 property sales existed where problems might be identified, but as he is the only person looking into the cases on behalf of the residents he has focussed his efforts on 34 and 71 Broadway Market and 14 units on Dalston Lane (these areas were selected because of apparently similar difficulties being experienced and the involvement of overseas property companies).

Members were advised that in Mr Shuter's opinion the problems detailed arose as a result of the Government ordering the sale of Hackney properties in 2000/2001 to balance the books. Mr Shuter explained that he had heard that the Council needed to raise both £52m and £72m and that £58m was raised from the sale proceeds.

The difficulties alleged by Mr Shuter date back to 1997 and concern 23 properties all of which it suggested have been sold to overseas companies despite local resident's interest in purchasing.

Mr Shuter suggested that during this period Hackney Property Services could not be contacted. All dealings relating to properties were with Nelson Bakewell.

Mr Shuter advised that following his complaint to the Council in August 2003 the Audit and Anti Fraud Department carried out an investigation into the sales of the properties in Broadway Market and Dalston Lane.

6.2.3 Shane Munroe

Mr Munroe was offered the opportunity to provide evidence to the Working Party but chose not to exercise this beyond submitting written questions. Answers are provided in the appendices to this report.

6.3. *Points specific to Broadway Market properties*

6.3.1 No 34

Mr Shuter (on behalf of Calogero Platia) advised that the leaseholder for 34 Broadway Market was not given the opportunity to purchase his property.

Members were advised by Mr Shuter that he had made requests to see a draft report marked ('Not for Publication – Relates to Transaction In Land') due before the Urban Regeneration Sub Committee in March 1999. The minutes for that meeting revealed the report was not presented at committee. Mr Shuter advised he had tried to obtain a copy of the agenda and an explanation as to why the report was not presented to the sub committee.

Mr Shuter informed the Working Party that following a long delay the property (no 34 Broadway Market) was sold to Dr Roger Wratten the owner of properties at 32 and 36 Broadway Market. After this transaction a rent review was undertaken which resulted in the sitting tenant being billed for circa £20,000 in back dated rent.

6.3.2 No 71

Mr Grant informed Members that Nelson Bakewell had not provided him with adequate notice to conduct the purchase of his property. This raised some concerns about the lack of control by the Council (in relation to Property Sales) and the role of Nelson Bakewell.

Mr Shuter (on behalf of Mr Grant) told Members that Mr Grant had been given notice of the intended sale, at auction, 28 days prior to the assigned auction date. There were two other properties in Broadway Market being sold at the same auction in December 2001. Nelson Bakewell were advised on the 12th December 2001 that Mr Grant and the two other leaseholders were interested in purchasing properties before the auction.

Mr Shuter explained that in his understanding Nelson Bakewell gave instructions that if leaseholders arrived any time up to 1 hour prior to when the auction was scheduled to commence (i.e. 12:30 pm) and provided a 10% deposit of the sale price the property would be removed from the auction. No documentation was available to support this assertion. Mr Grant advised that he went to the office of Nelson Bakewell at 12 noon on the day of the auction - with his deposit cheque of £10,000 and signed documents which he believed to be the contract for sale of his property. Mr Grant was not given a copy of this documentation and his cheque was subsequently returned to him 6 days later.

Mr Grant advised the Working Party that he attended the auction after this meeting out of curiosity, only to find the property, he believed he had purchased, came up for auction. Mr Grant stated that not many people appeared to bid for the property and that it was sold for the reserve price of £85,000.

6.3.3 Statements made by the Council in relation to Broadway Market Properties

The Audit and Anti Fraud Department felt compelled to investigate Broadway Market following the allegations made by Mr Shuter. The allegations raised concerns about possible fraud by Council Officials and agents of the Council (notably Nelson Bakewell).

The investigation focused on fraud rather than the allegations of unfair treatment. Audit and Anti Fraud also instigated an internal audit review conducted by PricewaterhouseCoopers relating to property disposals within LBH. Improvements in processes and controls have been implemented following the internal review.

No actual evidence of fraud has been identified in relation to the Broadway Market property sales following these investigations by Audit and Anti Fraud. No evidence of fraud has been found in investigations conducted by the Ombudsman and the Metropolitan Police.

LBH Services for Councillors Division made available to the Working Party minutes of the Urban Regeneration Sub Committee in March 1999. It has been confirmed that the draft report circulated by the community was not tabled at this meeting nor was it on the actual agenda for that meeting. This agenda has been located and has also been supplied to Members of the Working Party.

6.3.3.1 No 34

Audit and Anti Fraud investigated the property disposal at auction on 17/02/03. Earlier attempts to purchase the property by Mr Platia are covered by the Ombudsman Report as detailed in papers supplied to the Working Party.

Audit and Anti Fraud considered the property disposal in relation to the offers tabled and confirmed that Mr Platia was offered the property for £130,000, but Dr Wratten had indicated that he was prepared to pay £168,500 for the property and this offer was communicated to the Council. The Council was unable to proceed with the sale to Mr Platia as this would not have constituted best consideration. The property was subsequently sold at auction for £185,000.

Audit and Anti Fraud did not have any evidence of any fraud in relation to the sale of 34 Broadway Market.

6.3.3.2 No 71

Audit and Anti Fraud investigated the property disposal of 71 Broadway Market and confirmed a cheque for £10,000 was presented to the auctioneers on the day of the auction; however the reasons as to why this was presented are disputed.

The property was offered to Mr Grant 28 days prior to the auction subject to Mr Grant exchanging contracts prior to 13th December 2001. Mr Grant claims contracts were exchanged although he does not have a copy of the contract.

On 12th December 2001 a facsimile was received by the auctioneers regarding the treatment of Mr Grant's rent review. This act could imply Mr Grant was not confident of securing the property on the day before the auction.

On 13th December 2001 Mr Grant completed a Land Registry Caution Notice claiming interest as a beneficial owner. Mr Grant did not make reference to any unfair treatment in the auction room on the caution notice.

A letter was received by the Council in June 2004 from Mr Grant which appears to indicate that he had not finalised his mortgage arrangements when he handed over the deposit cheque.

A meeting between Mr Grant and the LBH Client Audit Manager in August 2005 did not convince the Client Audit Manager that any fraudulent activities had taken place on the day of the auction. This meeting was documented and e-mailed to Mr Shuter (an advisor to Mr Grant).

The LBH Client Audit Manager also met with three witnesses at the request of Mr Shuter and these witnesses failed to convince the Client Audit Manager that fraudulent activities had taken place. One witness indicated Mr Grant was asking for more time at the auction.

Audit and Anti Fraud concluded that better documentation of the event between Mr Grant and the auctioneers would have helped to resolve the dispute; however there is no evidence of fraud.

6.4 *Points specific to Dalston Lane properties*

6.4.1 Mr Shuter

The Working Party was advised by Mr Shuter that the Dalston Lane leaseholders had received notification that would be given first refusal from the sale of the property and were advised to attend a pre auction meeting, but this meeting did not take place.

It was suggested to the Working Party by Mr Shuter that the leaseholders therefore attended the auction with £3.2m collectively to purchase their properties. He went on to suggest that Nelson Bakewell decided that plots would be sold as one unit and not individually and did not give any notice to the leaseholders about this decision meaning their finances could not be joined together to facilitate a joint purchase.

The properties were sold at auction to an overseas company for £1.8m. Mr Shuter concluded that this was for £1.4m less than the purchase prices the leaseholders were willing to pay. Queries were posed to the Working Party as to whether such a scenario represented obtaining best value for the properties.

6.4.2 Bill Parry Davies (representing OPEN)

Bill Parry-Davies advised the Working Party that Dalston Lane currently has three leaseholders left, from those present preceding the sale of Freehold by LBH and that in his opinion no approach was made by the Council to sell the property to existing leaseholders.

Bill Parry-Davies informed members that he understood leaseholders were advised there would be a tender process and bids were submitted, but the process did not proceed and there had been no explanation provided as to why this was not the case.

Bill Parry-Davies went on to suggest to the Working Party that no details of the procedures in operation at the time of the property disposals are available. Furthermore the Leaseholders of Dalston Lane were advised that could submit their bids prior to the auction, which they submitted in excess of the guide price. A copy of the recorded delivery receipt for one bid was submitted as evidence.

Members were advised that Bill Parry-Davies understood that two bidders were present at the auction - one of whom was a telephone bidder. It appeared to the leaseholders that the auctioneer knew the telephone bidder personally.

The Working Party was advised by Bill Parry-Davies that following the sale of Dalston Lane properties a number of mysterious fires, which many believe to be arson attacks, had taken place. Furthermore a lack of investment could be seen to be reducing the appeal of the area. Pictures of the area were submitted to the Working Party In addition the Working Party was advised that existing Dalston Lane leaseholders had been refused lease renewals.

Mr John Wearn's business represented a family run business that had been in operation for over 30 years and both he and Mr Michael Wearn are current leaseholders. The Working Party was informed that the Wearn's had spoken to two Council Officers about making an offer to purchase their premises in advance of the auction. Mr Wearn stated he was advised to make an offer in writing. A bid of £140,000 was submitted with copies sent to both the auctioneer and the Council.

Mr Peter Powell (leaseholder) stated that his business had been operational since 1970 and he had managed the business since 1988. The Working Party was advised that a bid for his premises had been submitted for £120,000.

Mr T Saleh (leaseholder) Oussie Catering, advised the Working Party that a bid had not been submitted for the property his business occupied prior to the auction, but that funds had been arranged to bid at the auction to purchase the property.

6.4.3 Statements made by the Council in relation to Dalston Lane Properties

LBH Audit and Anti Fraud have established that only seven of the properties in question at Dalston Lane were occupied (at the time of sale) and only one bid was received from a resident leaseholder (details of which have been supplied to the Working Party).

Further work undertaken by LBH Audit and Anti Fraud confirmed Dalston Lane properties were displayed as individual lots in an auction catalogue, but that a decision was subsequently taken to sell the properties as a single lot. Statements made at a meeting of the Working Party on 14/3/06, by the Borough's Monitoring Officer indicated to the Working Party that documentation supplied to them demonstrated an intent by the Council's agents to communicate the recommended auction process to interested parties that is 'all lots to be sold as one initially and will only be offered individually if unsold as one' (pg 80 of 2nd dispatch for meeting 6/3/06).

The Audit and Anti Fraud department have no evidence that £3.2m in total was available in the form of separate bids for Dalston Lane properties.

6.5 *Points specific to Ellingfort Road properties*

6.5.1 Stephen Vaudrey

The Working Party was informed by Mr Vaudrey that he was an existing commercial tenant at Ellingfort Road renting two units.

Members were advised by Mr Vaudrey that the entire Ellingfort Road site, where he was based, had been withdrawn from auction three times. He also believes the Council are currently in negotiations with a small company about buying the properties, but has not received any information about the sale.

Mr Vaudrey raised his concerns about the availability of information relating to the sale process for commercial properties and that the process was not transparent. He stated that he had not been informed of the sale or given the opportunity to bid for his property.

Mr Vaudrey was not opposed to the Council selling commercial property but would prefer it to be conducted in a more transparent manner.

6.5.2 Della Tinsley

The Working Party was advised that for a period of 6 years a collective, known as ECP, made up of the tenants who live and work in purpose built properties on Ellingfort Road have campaigned against the sell off of their properties by auction. To date it is understood that the site has been withdrawn from auction 8 times.

The ECP suggested to the Working Party that the auction postponements are, in the main, understood to have come about because of the existence of a restrictive covenant placed on the site as a condition of the ERDF grant with which it was built. It was suggested to Members that the existence of this covenant has not always been clearly communicated at auction. The covenant is understood to

stipulate that the properties should be retained for small creative and cultural businesses until 2018. It is the opinion of ECP that retention of this covenant is vital. Affordable work space is already at a premium within East London and in the run up to the Olympic Games in 2012 this situation may worsen.

The collective ECP is understood to have made a number of bids for the site since 2001. On one occasion the Working Party was advised that ECP had been encouraged to enter a sealed bid by Nelson Bakewell and whilst they were deemed to represent the best candidate for the purchase, the sale did not proceed. No explanation was provided.

In September 2005 an offer made by ECP to LBH was accepted prior to the auction. ECP is currently waiting for confirmation that the sale will proceed, following an application from LBH to ODPM.

6.5.3 Statements made by the Council in relation to Ellingfort Road Properties

Documentation detailing correspondence between Mr Vaudrey and LBH Property Services was circulated to the meeting of the Working Party on 14/3/06 in order to evidence a Council statement that Mr Vaudrey was in fact aware (contrary to his submitted evidence) of the proposed sale of the Ellingfort Road freehold prior to public notices being displayed within the surrounding area.

6.6 *Additional Council Statements* (including LBH clients)

6.6.1 PricewaterhouseCoopers (PWC)

The working Party was advised that LBH Audit and Anti-Fraud commissioned PWC to undertake an internal audit relating to property disposals. The PWC findings from this audit were shared with the Working Party.

The audit concluded property disposals were more hurried than normal due to the main driver being to maximise property receipts. The audit revealed the Council might have conducted better disposals (at the time in question) given the correct resources and management capabilities, especially with the use of an overedge (see minutes from 6/3/06)

The audit revealed deficiencies in the following areas:-

- information provided before sales
- robust valuation procedures
- audit trail
- the need to standardise and promote procedures.

Following the audit recommendations were made and PricewaterhouseCoopers have been advised that the recommendations have been implemented. However PricewaterhouseCoopers have not carried out a detailed follow up review to confirm implementation, but are confident that best value would be achieved now.

Statements made to a meeting of the Working Party on 14/3/06 indicated that LBH have yet to formally respond to or endorse all recommendations contained within

the PWC report. In addition, insufficient sales have taken place to enable PWC to satisfactorily evidence the actioning of all recommendations.

6.6.2 Property Services

The Working Party was advised that the London Borough of Hackney's Corporate Asset Management Plan required a robust review of the current practices and procedures related to property disposal.

Any properties that are deemed surplus to requirements are sold to provide capital receipts with established review and disposal procedures existing, disposals now requiring Cabinet approval. The Working Party was advised that beneath the Cabinet structure an established process of systematic challenge exists which considers many criteria through an officer forum. Proposed disposals are then considered by the Cabinet Regeneration Committee and then put to Cabinet for authorisation.

A report to Cabinet asking for a disposal to be authorised would normally incorporate background information and recommendations that would include a proposed method of sale be this public auction, tender or private treaty depending on the circumstances relating to the property. Members were advised that whichever method was agreed would be conducted in a manner that was open, transparent and accountable.

As detailed in Papers received by the Working Party on 27th February 2006 a need exists to obtain best consideration through evaluation reports, when tendering, and through guide and reserve prices at auction. It was noted that both Cabinet approval and ODPM permission are required for the Council to seek to sell a property at below market value. Exceptions in certain circumstances are allowed, for example, sales to Registered Social Landlords (RSLs), where in such cases, non-monetary values like nomination rights may be taken into account.

Throughout its enquiries the Working Party received assurances that Chief Officers have every confidence in the Borough's current property disposals process as provided by the in-house service. Members were assured that the mechanisms in place are considered robust and ensure transparency whichever method of sale was utilised.

Members were advised that, as detailed in reports circulated to the Working Party meeting on 6/3/06, an Internal Audit had been undertaken in August 2005 and that PWC had to return to assess whether the recommendations had been fully implemented. However, as the Council had only sold one commercial property since the audit was undertaken, it remains unlikely that insufficient evidence exists in order to allow for an assessment of extent to which the recommendations have been implemented. It is anticipated that an assessment could be made early in the new financial year.

6.7 Documents submitted to the Working Party for consideration

- Motion from Council 1/2/06
- Excerpt from Minutes of Governance and Resources Scrutiny Commission from 20/2/06
- LBH Procedures and Practices for the disposals of properties
- Current LBH Sales Schedule
- List of property disposals 1999 to date
- Submitted questions & documentation from Arthur Shuter
- Submitted questions from David Stanton
- Submitted questions from Shane Munroe
- Submitted questions from Stephen Vaudrey
- Submitted questions from Della Tinsley
- Submitted questions & documentation from Bill Parry Davies
- LBH 34 Broadway Market pack
- LBH 71 Broadway Market pack
- LBH Dalston lane properties pack
- Cabinet Report; Shops of housing estates
- Excerpt from Nelson Bakewell Contract
- Ombudsman Complaint re Broadway market
- Internal Audit Report (PWC)
- Correspondence and minutes re Urban Regeneration Sub Committee 15/3/99
- Metropolitan Police Statement
- Copy of Savills' Money Laundering procedures
- Land Registry entry for garage site at Brougham Road (Welshpool House)

8 CONCLUSION

The Members Inquiry Working Party has produced this report as a summary of evidence received during its three public meetings, during February and March 2006. The report aims to capture and record the evidence provided to the Working Party, draw conclusions and make a number of recommendations.

Throughout this review it has been stressed that any evidence of wrongdoing should be passed to the LBH Audit and Anti Fraud team, the District Auditor or the Local Ombudsmen and in the case of any alleged criminal activity the Police.

Lead Councillors: Cllrs Cannon, Boff, Hodgson and Battson

Scrutiny Officer: Ben Vinter, ☎ 020-8356 3441

9 CONTRIBUTORS

The following attended the Working Party's meetings and gave evidence. Informal contributions were made by others present including members of the community.

The Working Party is grateful to all participants.

- Arthur Shuter (Member of the public)
- Calogero Platia (Member of the public)
- Mr Lowell Grant (Member of the public)
- David Stanton (Member of the public)
- Shane Munroe (Member of the public)
- Bill Parry-Davies (OPEN)
- Stephen Vaudrey (Member of the public)
- Fiona Fletcher – Smith (Corporate Director Neighbourhoods and Regeneration LBH)
- Bryn Harries (ACE Property Services LBH)
- Tim Douglas (Property Services LBH)
- Paul McLoughlin (LBH Audit & Anti Fraud)
- Justin Martin (PricewaterhouseCoopers)
- Simon Sharpe (PricewaterhouseCoopers)
- Meic Sullivan-Gould (Monitoring Officer LBH)

10. Membership of the Scrutiny Review Working Party

10.1 Elected Members

- Councillor James Cannon (Chair)
- Councillor Andrew Boff
- Councillor William Hodgson
- Councillor Elaine Battson

10.2 Council Officers

- Committee Officer; Felicity Lawlor
- Committee Officer; Tracey Anderson
- Committee Officer; Donna Knight-Olds
- Scrutiny Officer; Ben Vinter

Background papers

Representation Raised by	Details of Points Raised	Council's Response
Arthur Shuter	Were the instructions given to Nelson Bakewell by the Council in relation to property sales appropriate	Instructions included in 3 March despatch P111-117
Arthur Shuter	Was Nelson Bakewell's handling of the property sales monitored appropriately	See Audit Commission's conclusions 3 March despatch p163
Arthur Shuter	<p>Did Nelson Bakewell inform the Council that Mr Lowell Grant (Leaseholder) had attended their Offices at Sackville Street in the morning on 13th December 2001 and submitted payment of £10,000 as a proposed deposit against the full purchase price for the freehold interest of 71 Broadway Market, London E8. If yes, what instructions were given by the Council to Nelson Bakewell and were those instructions followed? If yes, by what authority did Nelson Bakewell sell the freehold interest in 71 Broadway Market to Broadway Investments Hackney Limited later that same day for 15% less than the value Mr Grant had already offered?</p>	<p>Papers in relation to 71 Broadway Market were included in the 3 March despatch p25-51</p> <p>The timing, location and circumstances of the presentation of the cheque are disputed, but there is no evidence that there was exchange of contacts.</p> <p>Given there was no exchange of contacts the property went to auction.</p>
Arthur Shuter	<p>14 properties in Dalston Lane were disposed of at auction held by Nelson Bakewell in February 2002. The Leaseholders were notified that they would receive first refusal on the freeholds. After attempts to sign contracts prior to the auction the leaseholders were advised to attend a pre-auction meeting at the auction house, but no pre-meeting took place. Nelson Bakewell advised they had decided to determine whether the properties could be sold as a single lot before being offered</p>	<p>Papers in relation to Dalston Lane were included in the 3 March despatch p 68-100</p> <p>Papers (3 March despatch p79/80) indicate that the decision to sell as a single lot was made around 12 March, one week before the auction.</p> <p>The decision to sell as a single lot was seen as more likely to raise the highest revenue than</p>

Representation Raised by	Details of Points Raised	Council's Response
	<p>as individual units. The leaseholders were given no prior notice of this decision and had not joined together financially. The 14 units were sold as a single lot to a Bahamas based property developer for 1.8 million, although the leaseholders had attended with up to 3.2 million available to purchase the units individually.</p> <p>A) Were these actions authorised by, or previously agreed with the Council?</p> <p>B) Was the Council and its clients deprived of substantial income by these actions and was this appropriate?</p> <p>C) Can this method of property disposal be defined as achieving 'Best Consideration', if not was the sale processed contrary to section 123 of the Local Government Act?</p>	<p>sale as individual lots.</p>
Arthur Shuter	On what grounds was the contract between the Council and Nelson Bakewell not renewed in April 2004?	The Nelson Bakewell contract could not be extended beyond March 2004 without retendering

Arthur Shuter	Did the Council suspect Nelson Bakewell did not act in an appropriate manner, contrary to their contractual obligations or fraudulently and if so did this have any bearing on the decision not to renew the contract?	The Council identified the need to retender its arrangements and as a result of this determined to bring the provision of property services back 'in-house'.
Arthur Shuter	<p>On the 15th March 1999 Hackney's Urban Regeneration sub-committee was due to consider a report by the Council's Property Services and Legal Services which recommended that the freehold interest of 34 Broadway Market, London E8 be sold to Mr Calogero Platia for the value of £45,000; or if it failed to complete the property would be sold on the open market. The report included that Mr Platia had expressed an interest in purchasing the freehold. The report was not put before the committee and all attempts to obtain an explanation on this failure have been unsuccessful. Hackney's Services for Councillors are unable to locate the agenda for the meeting of the Urban Regeneration sub-committee on 15th March 1999. The report was marked 'Not for publication – Relates to Transaction in Land' and an objection to the sales was raised by Dr Roger Wratten, a property developer who already owned the adjoining properties.</p> <p>A. Why was the report not put before the sub-committee? B Has the agenda for the sub-committee now been located? If yes is there an explanation as to why the report was withdrawn? C Has a satisfactory explanation been put forward</p>	<p>A It is common for reports to be prepared and not be taken by Committee. The report was not withdrawn as it was not included on the agenda for this meeting.</p> <p>B The minutes were included in 13 March despatch. The agenda has been located.</p> <p>C. There is no evidence that confidential information has been released by the Council</p>

	as to how information relating to the proposed sale (which appeared to be confidential) became know to a third party?	
Arthur Shuter	<p>Following a complaint by Mr Arthur Shuter on 23rd August 2003 an investigation by Hackney's Audit and Anti-Fraud Division was carried out. The Council Officer and Councillors stated that any issues arising from the sale of properties in Broadway Market and Dalston Lane arose due to the consequences of financial chaos whilst the Council was under no overall control.</p> <p>As Hackney Council came back under Labour Group control in June 2001, and most of the property sales in Broadway Market and Dalston Lane were commenced after June 2001, where does the responsibility lie for any failings or irregularities in those sales?</p>	The responsibility for failings and irregularities can only be established after the failings and irregularities have been established
Arthur Shuter	Following the change in control in June 2001, were sufficient measures taken to ensure that property sales were properly monitored and Nelson Bakewell were properly accountable?	See Audit Commission's conclusions 3 March despatch p163
Arthur Shuter	Can we now please have sight of the full instructions given by LBH to Nelson Bakewell On property sales generally	3 Mar despatch p113-117
Arthur Shuter	Can we now please have sight of the full instructions given by LBH to Nelson Bakewell In response to Spirit payment of £10,000	No specific instructions are recorded on file
Arthur Shuter	An honest explanation on the non-renewal of Nelson Bakewell's contract	The contract was let in April 1999 and was for three years with a two year extension clause. It would have had to have been retendered afresh.
Arthur Shuter	Are the panel prepared to authorise funding to facilitate an	The panel does not have power to authorise

	independent assessment of true market values of commercial properties (at the times of sales) for a specimen number of the properties sold – To compare actual sales income. (I would be happy to arrange this).	funding or expenditure
Arthur Shuter	Has the apparent mystery regarding the proposed sale of Welshpool House Garages now been resolved and If so is the proposed buyer now identified? Is the sale of a development plot with a true commercial value of £1 Million plus for just £117,000 'Best consideration for Hackney'?	A sale of a block of garages to the north of Welshpool House completed on the 18 th October 2002. These properties were sold to a housing association as detailed within the dispatch on 13/3/06.
David Stanton	Instructions from the Council to Nelson Bakewell (Focus on Dalston Lane and Broadway Market)	3 Mar despatch p113-117
David Stanton	Specific instructions to Nelson Bakewell following receipt of Mr Grant's Cheque.	No specific instructions are included on file
David Stanton	Clarifications on the lease issues for 71 Broadway Market.	There are no clauses excluding the security of tenure in the lease nor is there a court order which was required to exclude the security of tenure provisions
David Stanton	Clarification on the Welshpool House Garages	Orwell Court and Welshpool House are two entirely separate properties. The garages at Orwell Court are still in the Council's ownership
David Stanton	Details of the prior investigation by the Audit and Anti Fraud into the property disposals	Audit and Anti Fraud presented to the Commission on 6 March 2006
David Stanton Additional Questions / Concerns arising from the Meeting on 27/02/06	Why was 34 Broadway Market sold in February 2003 so long after the order from Government was made in 2001 and after the revenue had been raised from other sales	The sale of this property was delayed pending the conclusion of an Ombudsman's Report. The sale was approved on 16 December 2002 (3 March despatch p60-65
David Stanton	Provide copies of documents	Documents relating to

	sent to leaseholders stating property guide price for auction sale of 14 Dalston Lane properties.	correspondence with leaseholders are not held on file
David Stanton	Why was the rent review not carried out by Hackney Council in 1999	Not known
David Stanton	Provide copies of the 2 Ombudsman reports to next meeting	3 March despatch P118-159
David Stanton	Provide details of reporting structure of post filled by Marilyn Steadman	Unable to locate
David Stanton	Provide details of the purchaser's name for cases marked as 'Unknown' especially recently dated sales e.g. October 2005	A new list is being provided for 14 March 2006 meeting
Stephen Vaudrey	Would like to raise concerns about the transparency and accountability of the sales process for commercial property.	The Councils Corporate Property Working Group review all proposed disposals prior to the matter being considered at the Major Sites forum. All disposals require Cabinet approval
Stephen Vaudrey	Would like to raise concerns about the Council getting best value	The Council is obliged to get best consideration in the absence of any consent from the ODPM
Stephen Vaudrey	Would like to raise concerns about communications with existing tenants	Correspondence attached.
Stephen Vaudrey	Would like to see published guidelines and code of practice for Officers on sales.	24 Feb despatch p6-10
Stephen Vaudrey	Would like to see the link between regeneration and commercial disposal integrated and not policies in opposition	Regeneration always is considered in disposals.
Stephen Vaudrey	Stephen Vaudrey currently rents two commercial properties in Ellingfort Road E8, which he believes are currently being sold.	Pending consent from the ODPM it is proposed to sell to the Ellingfort Road Collective Partnership
Shane Munro Questions submitted for the meeting on 06/03/05.	Nelson Bakewell managed the Hackney Council commercial sales to developers. Which estate agent benefited / is benefiting from managing the	A list of purchasers has been prepared. Once sold the Council has no ongoing interest in the management of the

/Concerns arising from the Meeting on 06/03/06	resale or letting of the newly redeveloped properties Is the estate agent linked to Council staff or ex council staff who associated with the Council property sell off's	property and it is for the new owners to determine which agents they use No links are known about
Shane Munro	Stirling properties purchased a substantial number of properties on Broadway Market at a massively reduced price.	Stirling Properties submitted the highest bid when a package of derelict properties were tendered
Shane Munro	Marilyn Steadman whilst employed by Hackney Council had an office in one of their [Stirling Properties] properties. Were the Directors or their spouses responsible for any other purchases of Council Property or Directors of any other purchasing companies	Marilyn Stedman, as Project Manager of the BMRTA operated from 67 Broadway Market in 2001. No links between Marilyn Steadman and directors of Stirling Properties are known. Full links for Stirling not investigated
Shane Munro	How many companies that purchased Council properties are associated with Dr Wratten and how many properties has he purchased.	The Council would not know how many companies are associated with Dr Wratten
Shane Munro	Has there been an audit of Nelson Bakewell, Marilyn Steadman, Dr Wratten or anyone employed by Hackney Property Services	No, the only audits have been those by the Audit Commission and PricewaterhouseCoopers (3 March despatch p160-171 and p172-196)
Shane Munro	When tenants were informed that the properties they inhabited would be sold, were copies of the Council Directives regarding general procedures for disposal of property, method of sale and disposal price given to the tenants by the Council.	We have not reviewed all tenant files to ascertain that all tenants of all properties would have been informed of sales General procedures on disposals were not issued
Shane Munro	What legal or financial relief has the Council given to the tenants of 34 and 71 Broadway Market during this investigation considering the Council's alleged culpability for the tenant's financial hardship?	None
Shane Munro	Does Dr Wratten or his associates often subject sitting	The council cannot answer for Dr Wratten

	<p>tenants to an overbearing rent demand because of their own lapses regarding rent reviews</p> <p>a. How prevalent is this sort of action with other property developers</p> <p>b. Should it be legal</p> <p>c. Should the Council do more to protect sitting tenants when selling properties onto developers</p>	<p>The new owners are still bound by the same lease, so they have exactly the same rights and obligations as before the sale</p>
Shane Munro	<p>Will other Council's heed recommendations from this Inquiry?</p> <p>I feel the value of recommendations is limited if just restricted to Hackney Council. Hackney Council has disposed of a substantial number of its properties already. Council's next in line for gentrification should benefit. If not, what is the potential for broadening this Inquiry?</p>	<p>We will copy the results of this enquiry to the Audit Commission</p>
Shane Munro	<p>How soon after purchase then eviction does a development take place?</p>	<p>There are no proscribed or applicable timescales</p>
Open – Bill Parry-Davies Questions from meeting held on 06/03/06	<p>There were no details of what the Council's sales procedures were at the time of the sales for Dalston Lane. Please can we find out what these were?</p>	<p>Instructions to Nelson Bakewell 3 March despatch p111-116</p>
Bill Parry-Davies	<p>The Dalston Lane leaseholders were first advised of a sealed tender process to which they responded. This did not proceed and there were no details as to why?</p>	<p>There appear to have been financial problems with the highest bidder</p>

Bill Parry-Davies	Price Waterhouse Coopers has indicated they have been advised the recommendations in their internal audit report have been implemented by the Council following the review. Are there any documents to evidence this fact?	The High priority recommendations have been followed up by PWC and have largely been implemented.
-------------------	--	---

Name	Question	Council Response
John Barker	Can you explain what Council tax payers have to show for the debts which the Council says necessitated these sales to anonymous off shore post box companies at what seem to be absurdly low prices?	LBH sold properties in order to avoid debt which otherwise would have resulted in likely reductions in Council provided services
John Barker	Why they were done at auction?	Auction is a transparent process for sale
John Barker	What was the reserve prices e.g. in the case of Mr Grant?	£85,000 (3 Mar despatch p37)
Andy Walpole	Will the commission re-examine the existing investigations that the Council's Audit and Anti-Fraud had considered?	Audit and Anti Fraud gave evidence on Monday, 6 March
Ms Demetra Kotouza	Is there an explanation for the fact that the Council is continuing to sell commercial property as job lots and is it not obvious that individual sitting tenants are not favoured by such a policy	Property may be sold in lots when the perceived benefits of sale by lot outweigh individual sales (eg regeneration).
Ms Demetra Kotouza	The first step towards giving leaseholders a chance to buy would be to sell properties individually	Noted
Tony Collins	What happened to standing order 103 giving preference to leaseholders? When was it abolished and when was the decision taken to abolish?	It was replaced in October 2002, with the introduction of the cabinet structure Standing Order 103 was used at a time when property

Name	Question	Council Response
		disposal decisions were taken by a number of different functions. Within the current structure all such decisions are taken by the Cabinet.
	Do you intend to investigate the actions of Marilyn Steadman	No
Tony Collins	What links do we know of between Nelson Bakewell and Hackney Property Services	Hackney Property Services is the part of the Council that oversees large elements of the Council's Property Portfolio. Nelson Bakewell was a contractor engaged by Hackney Property Services to help monitor that estate on behalf of the Borough
Betty Shanks	Why was the Ann Taylor sold to Ujima with out any consideration to those in the area	This is incorrect – no sale has taken place
Betty Shanks	It is noted that Mr. Max Caller, former Chief Executive of LBH and believed to be currently CEO with another London Borough, is regularly attending meetings, particularly those relating to issues surrounding commercial property sales. Are the Panel able to determine - perhaps by inviting Max Caller to give evidence - exactly what is his interest in these matters.	Max Caller has not been to any Commercial Property meetings involving LBH.
Jim Paton	Why are we still waiting for details for instructions gives to Nelson Bakewell <i>This information has been repeatedly requested since</i>	3 Mar despatch p 113-117

Name	Question	Council Response
Jim Paton	<p><i>December 2005</i> Why are we still waiting for details for instructions gives to Nelson Bakewell Specifically on presentation of deposit cheque by Lowell Grant?</p>	<p>No specific instructions are recorded on file</p>
Jim Paton	<p><i>This information has been repeatedly requested since December 2005</i> Why was 116 – 118 Shoreditch High Street sold for a nominal £1 Was this best value? Why was the purchaser unknown?</p>	<p>The reversion on the Head Lease (99 years) was worth £1.00 and sold to Shoreditch Town Hall Trust LBH retain the freehold.</p>
Jim Paton	<p>Why was 124-126 Morning Lane sold for £7,000 in 2000 (i) Was this best value? (ii) Why was the purchaser unknown?</p>	<p>It was sold at auction Purchasers details are now known</p>
Jim Paton	<p>Why was 35 Lingwood Road sold for £7,000 in 2003 (iii) Was this best value?</p>	<p>It was sold at auction</p>
Jim Paton	<p>Why was 53 Craven Walk sold for £1,000 in 2001 (iv) Was this best value?</p>	<p>It was sold at auction</p>
Jim Paton	<p>Why was 47 Meeson Street sold for £20,000 in 2000 (v) Was this best value?</p>	<p>It was sold at auction</p>
Jim Paton	<p>Why was 107-117 Morning Lane sold for £118,738 in 2002 (vi) Was this best value?</p>	<p>It was sold at auction</p>

Jim Paton	Why are the purchasers of over 20% of the properties in the disposals list shown as 'Unknown'?	These details have now been obtained with the exception of 7 cases where we are awaiting details from the Land Registry.
Jim Paton	<p>Poor record keeping in the past can not be the whole explanation. Many of these sales occurred in 2002. examples as follows:-</p> <ul style="list-style-type: none"> • <u>Unknown Sales 2003</u> Beatty Road 39 Foulden Road Hoxton Square 9 Moulins Road 2 Mountfield Road Mount Pleasant Lane Stoke Newington High Street • <u>Unknown Sales 2005</u> 38 Mortello Street 70-72 Greenwood Road • <u>Unknown Sales 2006</u> 126 Forest Road 	<p>No information Details on schedule Details on schedule Details on schedule Details on schedule Details on schedule Details on schedule</p> <p>Details on schedule Details on schedule</p> <p>Details on schedule</p>
Questions from Meeting held on 06/03/06		
Lynne Faulkes	Please clarify the difference between best consideration and best value.	<p>"Best consideration" is the phrase used in s123 of the Local Government Act 1972.</p> <p>"Best Value" is a wider term which implies not just purchasing the cheapest option.</p>
Stephen Selby	Does Hackney Council or its bankers check the provenance of monies paid for property sales – in particular money from the Bahamas?	See Auctioneers details with regard to this issue in 13 Mar papers

<p>Wolfie Smith</p>	<p>Why can't the Council C.P.O. sound and music (Dalston Lane) back from it's freeholder as it has a significant and unique social function.</p>	<p>CPO powers can only be used for a statutory purpose e.g to provide housing or schools. No clear statutory purpose would be served by buying the freehold of a shop. The costs of an expensive and uncertain CPO process would have to be assessed against the benefits to the residents of Hackney of owning the freehold of this shop.</p>
---------------------	--	--