



February 25, 2021

# Independent Review of Property Transactions

Report Prepared for  
Royal Borough of Kensington and Chelsea

Report Status: Final

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# 1. Introduction

Kroll Associates UK Limited (“**Kroll**”, “**we**” or “**us**”) was engaged by The Royal Borough of Kensington and Chelsea (“**RBKC**” / the “**Council**” / the “**Client**”) to conduct an independent review (“the **Independent Review**” / the “**Review**”) of transactions relating to its leasing and / or acquisition of certain properties. It was agreed with RBKC that the transactions relevant to the four properties set out below would form the scope of the Independent Review (the “**Relevant Transactions**” / the “**Transactions**”):

- (1) the lease of the Isaac Newton Professional Development Centre (“**INC**”);
- (2) the lease of the North Kensington Library (“**NKL**”);
- (3) the lease of the Westway Information Centre (“**WIC**”); and
- (4) the purchase from and lease-back of the Wornington Road site (“the **Kensington Centre**”) to Kensington and Chelsea College (“**K&CC**”) (the “**Kensington Centre Transaction**”).

The properties are all situated within the Westway area,<sup>1</sup> which was the focus of a large-scale Council-led development programme known as the Westway Strategy. The Westway Strategy formed part of RBKC’s 2020 Corporate Property Strategy, approved in February 2011, that sought to “*align the asset base with the organisation’s corporate goals and objectives to ensure that land and buildings provide optimal value to the organisation and the community it serves*”.

RBKC has received a significant amount of public scrutiny over the decision-making and rationale surrounding a number of property transactions which were entered into by the Council as part of the Westway Strategy, including the Relevant Transactions.

## 1.1 Objective

The broad objective of the Independent Review was to consider the Relevant Transactions in the context of the strategic direction and other frameworks under which the Council, its elected members (“**Members**”) and Council staff (“**Officers**”) were required to operate. Kroll was required to consider from the information made available to it what conclusions could be drawn with regards to:

<sup>1</sup> The Westway area comprises the surrounding areas of the Westway, an elevated dual carriageway section of the A40 road in West London running from North Kensington to Paddington.



- the propriety of Officer and Member governance and decision-making processes, including sourcing and the use of appropriate internal and external professional advisors in pursuing the Relevant Transactions;
- the extent to which the Relevant Transactions were within any stated policy or strategy adopted by RBKC;
- the extent to which RBKC considered all available options and rationale for decisions made (considering advice received) in relation to the Relevant Transactions; and
- consideration of lessons learnt to be applied to future property, governance and decision-making processes.

## 1.2 Questions for consideration

Specifically, Kroll was asked to consider, where relevant, the following questions in conducting its Independent Review of the Relevant Transactions:

- Was there a property strategy in place which covered these Transactions and was the strategy followed in the decisions made regarding the properties?
- Was a formal options appraisal undertaken prior to each acquisition/lease and was this presented to and approved by Members?
- What were the decision-making/governance processes around the proposed acquisitions/leases and what was the extent of Member involvement through each process?
- Was appropriate financial, property and legal advice sought, given and considered in all cases? Was the advice appropriate to the matters under consideration?
- What other options were considered by Officers of the Council which considered the financial situation and potential non-financial impact?
- Were any valuations obtained (if relevant) and were these appropriate and fair?
- How was best consideration (section 123, Local Government Act 1972) for RBKC demonstrated?
- Were lease / rental figures fair to all parties?
- Did the Transactions offer the best value for RBKC and the residents of RBKC?

- Were there any indications of wrongdoing or conflicts of interest in the way that the Relevant Transactions were handled and ultimately executed?
- Were there indications that the decisions made in relation to the Relevant Transactions reflected a particular cultural dynamic in place at the time, which may not have taken into consideration the broader views of the diverse local community?

## 2. Methodology

### 2.1 Information sources

In order to address the scope of work highlighted above, Kroll drew upon several sources of data to enable us to reconstruct the events leading up to and surrounding each of the Relevant Transactions. This included relevant documentation and email data obtained from RBKC. Kroll identified relevant individuals' Council email accounts during the scoping phase of the review, through discussion with local community groups, information received from RBKC and from a review of certain allegations made on online blogs / bulletin boards.

The review of electronic communication records from a number of Members and Officers formed a substantive element of our analysis. In total, RBKC made available to Kroll the mailboxes of 18 Members and Officers of the Council requested by Kroll, which contained in excess of a million documents. Kroll conducted targeted and relevant key-word searches across the data set and reviewed approximately 6,000 documents.

The review of electronic communications data and other documents focussed on:

- internal communications between Members and Officers and, to the extent possible, external communications with stakeholders and advisors (see section below);<sup>2</sup>
- governance / Cabinet minutes, including confidential meetings and strategy meetings and those available in the public domain;
- presentations and papers prepared for governance meetings;
- documents and advice provided by professional advisors; and
- contract terms relating to the Relevant Transactions.

<sup>2</sup> The communications data which was reviewed by Kroll was captured by RBKC – no independent forensic collection of possible relevant data was undertaken.

In conjunction with the above, analysis was conducted of public domain resources, such as media reports, UK corporate records, and social media platforms to identify any information that may have been relevant to the Independent Review.

## 2.2 Previous report relevant to the Kensington Centre

Kroll was previously engaged to conduct an Independent Review on behalf of K&CC and produced a report in October 2018 (The “**K&CC Kroll Report**”) which the college published. The scope of that review related to one of the Relevant Transactions covered in this report, the Kensington Centre Transaction. Where appropriate, and to supplement information which was available for review, the K&CC Kroll Report is referred to, in order to provide relevant context.

## 2.3 Data retention caveat

Kroll understands from the Client that, prior to RBKC’s transition to Office 365 in January 2017, mailboxes were held on the Council’s servers (MS Exchange), where individual e-mail accounts had been subject to a maximum file size limit. As a result, Members and Officers were instructed by the IT department to delete unimportant items from their mailboxes at regular intervals to save server space, and to save copies of important emails, typically in .pst files (offline e-mail storage/archive facility in MS Outlook) locally (e.g. on their computers or in their personal folders on the network). Mailbox size limits were reportedly increased when new versions of MS Exchange were installed, but Members and Officers were not always informed of this and the general practice did not change. In addition, prior to 2017, we understand that no copies of items in RBKC mailboxes were saved in any external locations for the purposes of a litigation hold. Finally, it was not common practice to retain copies of mailboxes belonging to former Officers or Members after their departure, with back-ups being retained for a period of three months only. When computers were handed back by former employees and Members, the devices would be re-imaged and issued to new users, meaning that any locally stored data would not be retained. As part of the implementation of Office 365 in January 2017, a litigation hold policy was introduced which covered all data migrated at that point as well as all data beyond that point.

Because of this data retention policy and the widespread practice of regularly block-deleting emails (prior to 2017) during the period covering the Relevant Transactions, our review has been limited to those items remaining on RBKC servers, which is likely to be only a subset of the email traffic and documents exchanged by relevant individuals during the key decision-making periods. Where mailboxes had not been retained for former employees and Members, search queries for items involving former employees and Members (where items had been retained in others’ mailboxes) were run and the results provided to us for review.

## 2.4 Interviews

In addition to reviewing electronic documentation, Kroll conducted interviews with the following individuals:

- Former Councillor Nicholas Paget-Brown (“**Cllr Paget-Brown**”), former Leader of the Council;
- Nicholas Holgate, former Chief Executive of the Council;
- Former Councillor Rock Feilding-Mellen (“**Cllr Feilding-Mellen**”), former Deputy Leader of the Council and former Cabinet Member for Housing, Property and Regeneration;
- Councillor Quentin Marshall (“**Cllr Marshall**”), former Chairman of the Housing and Property Scrutiny Committee;
- Councillor Emma Dent-Coad (“**Cllr Dent Coad**”), former Chair of the Cabinet and Corporate Services Scrutiny Committee and Labour MP of Kensington between 2017 and 2019;
- Councillor Julie Mills (“**Cllr Mills**”), former Deputy Chair of the Cabinet and Corporate Services Scrutiny Committee;
- Lord Daniel Moylan (“**Cllr Moylan**”), former Councillor and member of the Cabinet and Corporate Services Scrutiny Committee during the time of the Transactions;
- Tony Redpath, RBKC’s Director for Strategy and Local Services;
- Richard Jones, Director of Property at Alpha Plus;
- Stephen Armitage, Director of Planning Development and Regeneration at Lambert Smith Hampton;
- Mark Nelson-Smith, the former Finance Director of Notting Hill Prep School; and
- Alastair Perks, a Commercial Advisor from CBRE focussed on London development projects.

Relevant comments from the interviews have been included in the report narrative as appropriate.

## 3. Executive Summary

### 3.1 Structure of the summary

This Executive Summary is structured as follows:

Reference	Section title	Summary of content
3.2	Introduction to the Relevant Transactions	Summarises the events in relation to the four Transactions in scope
3.3	Overview and context of strategy	Provides an overview of the broader context under which the Transactions took place and how this fed into the formulation of the formal strategy of the Council.
3.4	Alignment with the strategy	Considers the extent to which the Relevant Transactions were aligned with the strategy of the Council.
3.5	Decision-making processes	Sets out the structure of how decisions were made according to the Council's constitutional framework.
3.5.1	Analysis of decision-making for the Transactions	Considers how the decision-making processes as defined in section 3.5 were applied in practice.
3.6	Scrutiny processes	Sets out the framework for scrutiny in the Council
3.6.1	Analysis of scrutiny of the Transactions	Sets out Kroll's analysis of the scrutiny of the Relevant Transactions and considers the scrutiny process, actions arising from scrutiny, timeliness of scrutiny and subsequent reform of the scrutiny process.
3.7	Involvement of elected Members in the Transactions	Sets out concerns raised and Kroll's analysis relating to the involvement of elected Members in relation to the Transactions.
3.8	Wrongdoing and alleged conflicts of interest	Considers allegations of both wrongdoing and conflicts of interest.
3.9	Cultural considerations	Considers Kroll's observations and conclusions from a cultural perspective

3.10	Summary of conclusions	Summarises all the conclusions in the context of the key questions set out in the Methodology section.
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## 3.2 Introduction to the four Transactions

The Relevant Transactions are summarised below (together, “**the Relevant Properties**”).

### **Isaac Newton Professional Development Centre (“INC”)**

The INC, which historically had been a community school, was more recently used by RBKC as a centre for teacher-training and other support programmes for Council staff working in family, children and educational services. Documents reviewed by Kroll showed consideration of several options for the future of the INC. Ultimately, a tender for a 25-year lease was issued in 2013 and bids were submitted by a number of private schools, including Notting Hill Preparatory School (“**NHP**”) and Alpha Plus, the owner of another independent school in the area, Chepstow House. The lease was awarded to Alpha Plus in March 2014.

### **North Kensington Library (“NKL”)**

The NKL was opened in 1891 and was the first purpose-built library in Kensington. It is situated next to NHP. Cabinet approved a decision in June 2015 to build a new modern library close to the existing NKL, as the existing NKL was deemed not fit for purpose. Following the decision to build a new library, a decision was made in November 2015 to lease the existing facility to NHP. Following the Grenfell Tower disaster and a decision to halt all development projects in July 2017, the transaction did not take place and the NKL today remains a public library.

### **Westway Information Centre (“WIC”)**

The Westway Information Centre was an RBKC facility, which, mostly housed Council offices and support staff, as well as the Citizens Advice Bureau. Historically, the WIC had been available for use by the North Kensington community, but prior to the Transactions and the formulation of the Corporate Property Strategy it was being used predominantly for council offices and as a Citizens Advice Bureau. A decision to lease the WIC to NHP was made in November 2015. NHP moved into the WIC in 2018 and subsequently sub-let part of the space to the sandwich chain Pret a Manger. The Citizens Advice Bureau was moved to a nearby property on Acklam Road in January 2015.

### **The Kensington Centre**

The Kensington Centre, located on Wornington Road, North Kensington, is one of the sites operated by Kensington and Chelsea College (“**K&CC**”), a further- and adult-education provider. In 2016, K&CC sold the Kensington Centre to RBKC for GBP 28.6 million, with a cash payment being made for GBP



25.3 million to account for a three-year leaseback of the property to the college. The long-term objective of RBKC's acquisition of the site was to create a mixed-use site including an educational space, affordable housing units to be used for decanting residents from nearby regeneration projects and private-rental sector housing, which would collectively provide long-term revenue for the Council and assist it in fulfilling its regeneration and housing objectives.

The site currently remains as an educational facility following its sale to the Department of Education in 2019 for GBP 10 million.<sup>3</sup>

### 3.2.1 Interdependence of transactions

While Kroll's approach has been to consider each Transaction on its own merit, it is important to note that the Transactions did not happen in isolation and had a number of interdependent factors, particularly the three leases which were part of the Westway Strategy, details of which are provided in the following sections. For example, the terms of the lease awarded off-market to NHP for the NKL included a future commitment not to object to any future INC developments. The costs for developing the new library would also be part-funded by the income generated from the leasing of the INC. Furthermore, the NHP offer in relation to the WIC was made on the basis that agreements to lease the WIC and the NKL were exchanged simultaneously, subject to the NKL being vacated upon relocation to the new library facility on Lancaster Road. In general, although a number of bids were considered, the highest bidders for the leases were independent educational providers in all three sites, with two of the three leases being granted to NHP, which also bid for the third site, the INC.

<sup>3</sup> The terms of and the rationale for the sale did not form part of the Review.

### 3.3 Overview and context of strategy

Between 2010 and 2016, Communities and Local Government funding was the hardest hit of all Government Departments in the Treasury Spending Reviews, with a reduction in the allocated budget of more than 50% over a five-year period.<sup>4</sup> RBKC's own general grant from Central Government funding during this period was reduced by approximately 30%. While the overall budget also decreased, the funding gap grew during this period.

Despite the reduction in Government funding, local authorities, particularly in London, were also coming under increased pressure to accommodate the growing population, with the Greater London Authority ("**GLA**") identifying a need for an additional 62,088 homes per annum in the city in a Strategic Housing Marketing Assessment in 2013.

In February 2009, a report was presented to Cabinet seeking approval for funding for the SPACE Programme, a project which focussed on refurbishing the office space at Kensington Town Hall. The objective of the project was to create energy and space efficiencies and to increase the number of people working out of the Town Hall from 1,058 to 1,607. As part of this plan, Council services housed in different properties, including the WIC and INC, were to be moved to the Town Hall in order to free up properties which could be used to generate additional revenue for the Council.<sup>5</sup> A separate facility at 2-4 Malton Road, W10 5UP ("**the Malton Road Hub**"), was also refurbished in 2014 by the Council in order to become the base for a number of Family and Children's Services and Adult Social Care staff.<sup>6</sup> The objective of the construction of the Malton Road Hub was to consolidate Council offices into one modern facility and release other Council properties that would consequently become surplus to Council requirements, including the INC and WIC, to be considered for lease.

In 2010, the Council had over 500 operational or investment properties with a total value of approximately GBP 750 million. While the investment properties generated an income, the revenue generated did not cover the costs of the operational units, which therefore had to be met from other income sources. The portfolio had no central corporate management structure and control was devolved to functional Council units.

<sup>4</sup> Exhibit 1, "Spending Review: Department-by-department cuts guide," *BBC News*, 24 November 2015, [weblink here](#)

<sup>5</sup> Exhibit 2, Report by the Executive Director of Planning and Borough Development and Senior Responsible Owner of the SPACE Programme (SRO), 19 February 2009, [weblink here](#)

<sup>6</sup> The decision to refurbish the Malton Road Hub was taken on 19 September 2013 and did not form of part of the Review. However, it is important to note that certain services from the INC and WIC were re-located to the Malton Road Hub which freed up those properties to be leased, [weblink here](#)

The Council commissioned a review of its property portfolio in 2010 by property consultants King Sturge. The main objective of this review was to identify sites which were the worst performing operational properties and which could be leased or sold in order to generate long-term revenue for the Council, thereby protecting its front-line services. The results of the Review led to the establishment of the Corporate Property Department which had a broad remit to “*ensure that the Council’s property is used to its full potential, and to advise on all property matters*”.

RBKC adopted a Corporate Property Strategy (“**the Strategy**”) in February 2011. The Strategy had the defined goal to “*align the [Council’s] asset base with the organisation’s corporate goals and objectives to ensure that land and buildings provide optimum value to the organisation and the commitment it serves*” and “*to support RBKC’s commitment to provide front-line services*”.<sup>7</sup>

The objectives were defined in the Strategy as:

- **Cost- and space-efficient** – RBKC would use floor space more efficiently, resulting in a reduction of floor space and the number of buildings occupied. RBKC would also seek to increase income from surplus operational property to contribute towards the costs of front-line services. The savings would be in line with targets established by RBKC.
- **Suitable and sufficient** – RBKC would ensure properties were fit for purpose and that they were in the right locations and of the right quality to provide for the needs of customers and staff.
- **Shared** – Where possible, property would be shared with partner organisations.

As part of the first objective, the Strategy set out that the worst-performing properties (e.g. the highest running cost, the worst condition and poorest location in relation to service needs) would be considered for release, i.e. lease, to generate revenue, or in rare circumstances, sold. The Strategy included a plan to double the Council’s income by 2020 from its property portfolio, from GBP 4.7 million per annum in 2011 to GBP 9.4 million per annum in 2020.<sup>8</sup>

In the review undertaken by King Sturge, all three of the properties put up for lease in the Review, (namely INC, NKL and WIC) were identified as being surplus to Council requirements. The fourth

<sup>7</sup> Exhibit 3, Report by the Executive Director for Finance, Information Systems and Property, 17 February 2011, [weblink here](#). Exhibit 4, Corporate Property Strategy 2020, [weblink here](#)

<sup>8</sup> Exhibit 5, Property Portfolio Performance Update by the Director of Corporate Property and Customer Service, undated.

Transaction, involving the Kensington Centre, comprised an acquisition of a new site and the subsequent lease-back to K&CC for three years. At the time of the King Sturge Review, the opportunity for RBKC to purchase the Kensington Centre had not yet materialised and therefore this Transaction did not feature in the King Sturge Review.

Additional efficiencies were found through the establishment of Bi- and Tri-Borough shared service agreements with the London Borough of Hammersmith and Fulham and Westminster City Council during the period of the Transactions, starting in June 2011.<sup>9</sup> The programme sought to combine certain services from the three London boroughs to deliver savings without compromising the provision of services.

In February 2015, Michael Clark, the Director of Corporate Property during the time of the Relevant Transactions, provided an update on the performance of the Corporate Property Department in pursuit of the Strategy. Mr. Clark set out that by 2014 RBKC had achieved GBP 9.2 million per annum in income from the property portfolio, against the Council's target of GBP 6.27 million per annum at the time. Mr. Clark summarized that "*we effectively doubled the Council's income in three years, six years ahead of schedule*". Mr. Clark also suggested an amended target of GBP 20 million per annum in income and savings by 2020 for the Corporate Property Department.<sup>10</sup>

Documents in the public domain demonstrate that during the challenging period of reductions in Central Government funding that were likely to become permanent, the Council broadly maintained, and in many cases improved the quality of the provision of its services. Children's Services in RBKC were rated as 'outstanding' by the regulator Ofsted in March 2016, improving on the 'good' rating received in 2012.<sup>11</sup> The borough's primary schools delivered the best results in England in 2015, where levels of reading, writing and mathematics were recorded as 10% above the national average and 8% above the average for London schools. A new leisure centre was opened in 2015 which accommodated nearly double the number of members in comparison to the old centre.<sup>12</sup> During this time, the Council Tax charged to residents did not increase and was the fifth lowest in England in 2016. It is evident that the efficiencies of space with the corresponding savings this generated, combined with the revenues

<sup>9</sup> Exhibit 6, Tri-Borough Executive Decision Report for Corporate Services, 17 April 2013, [weblink here](#)

<sup>10</sup> Exhibit 5, Property Portfolio Performance Update by the Director of Corporate Property and Customer Service, undated.

<sup>11</sup> <https://files.ofsted.gov.uk/v1/file/50004316>

<sup>12</sup> <https://www.rbkc.gov.uk/sites/default/files/atoms/files/Statement%20of%20Accounts%202015%20-16.pdf>

received from the Property portfolio, played a significant part in the funding of these services without having to generate more revenue through an increase in council tax.

Despite the evidence of maintenance - and in some cases improvement - of the provision of Council front-line services, during the time that the Strategy was being implemented, we understand that there remained a significant wealth and opportunity gap between the poorer areas of the borough and the more affluent areas. There was also, we understand, a perception in some parts of the community that the Strategy represented a prioritisation by the Council to generate revenues through regeneration and development of buildings ahead of the maintenance and protection of community assets in these areas. While this Review focusses on the question of the alignment of the Transactions with the Strategy, it does not consider in detail the historical and demographic context predating the design and implementation of the Strategy, which appears at least in part to have fuelled opposition to the Strategy itself in some areas.

Whilst the Strategy represents the main overarching document upon which we have focused relating to the Transactions which are the subject of this Review, Kroll has identified other strategic documents that also had some relevance. For example, strategies relating to planning, including the Core Strategy 2010 and the Consolidated Local Plan 2015, were considered in relation to decisions concerning the WIC and the Kensington Centre, respectively. The Westway Strategy, a change programme in and around the Westway Area where the Relevant Properties were situated, also formed part of the Strategy. The Westway Strategy had two main aims. First, the Westway Strategy sought to consolidate Council internal services into fewer buildings in order to reduce running costs and release surplus buildings to be leased. Both the INC and WIC housed Council back-office activities which were relocated to achieve this aim and enabled the buildings to be let. Secondly, the sites within the Westway Strategy would also be developed in order to create new homes and community facilities as well as address shortcomings in existing services. The plans for the Westway Strategy were outlined in the Westway Newsletter, a publication that had been sent to residents in the Westway area every six months since November 2012. The Westway Newsletters set out details of RBKC's plans relating to the NKL, WIC and INC, amongst other developments.

Where appropriate, Kroll has referred to these other strategic documents and considered whether the decisions made were aligned with the other strategic objectives of the Council.

### 3.4 Alignment with the strategy

As set out above, the main objective of the Strategy was the provision of long-term direction for the management of the property portfolio and to facilitate its alignment with the Council's commitment to protect front-line services.

The primary objective of the leasing of the INC, WIC and NKL was to use surplus property to generate additional revenue for the Council, in order to make an active contribution to the financing and delivery of the Council's front-line services. Similarly, the decision-making behind the acquisition of the Kensington Centre demonstrated overall objectives which were aligned with the Property Strategy, i.e. to develop more residential property (including affordable housing) and generate revenue for the Council.

The three main areas of the Strategy have been considered in respect of the Transactions and are summarised below.

With regards to cost and space efficiency, the refurbishment of the Town Hall set out in the SPACE programme and the development of the new Malton Road Hub freed up the space in the INC and the WIC for other purposes. The decisions to lease these buildings to third parties resulted in savings for the Council on costs of maintenance of the sites as well as revenue-generation from rental income. With regards to the NKL, the plan to build a new library and lease the old facility would provide library space in a more efficient and effective way, reducing the costs of maintaining the old building as well as generating revenues from the leasing of the site.

While the proposals for the redeveloped space at the Kensington Centre would have reduced the educational floorspace to 31,520 sq. ft, a significant decrease on the previous 57,479 sq. ft which the college had available, we understand from a report commissioned by RBKC that the Kensington Centre was only approximately 50% utilised at the time of the Transaction. The development would therefore allow more efficient use of the remaining space and assist RBKC in fulfilling its housing and regeneration objectives.

Kroll concluded that the rationale and decisions around the Transactions were in line with the objective of ensuring that buildings were suitable and sufficient for purpose. For the INC and the WIC – the properties were in high demand from local private educational providers which considered the space suitable for their purposes. Given that they had been rendered surplus because of the rationalisation of the Council offices as detailed above, it was presented to Cabinet that it would be logical that they be offered for alternative use, including to support private educational provision in the borough, which

was in high demand. The Citizens Advice Bureau, previously located within the WIC was relocated to a site at Acklam Road, an adjacent road to its prior location, and other facilities previously held at the INC were relocated to the Malton Road Hub.

For the NKL, it was planned that the new library was to be built on Lancaster Road, approximately fifty metres away from the existing Library. NHP was interested in the lease of the library as it was looking to secure additional space to support its long-term ambitions to expand. Additionally, the NKL was situated next to NHP's existing facility on Lancaster Road, and the Council was therefore able to attract a premium on the rental due to this "*marriage value*".

For the Kensington Centre, according to the terms of the K&CC sale and leaseback, following the expiry of K&CC's lease period at the Kensington Centre in 2019, the College was to move to a temporary facility on Carlyle Road, located in the south of the Borough, which was intended to be used until the original site had been redeveloped. Following concerns raised by Members about adult education provision in the north of the borough during this time, RBKC agreed to provide K&CC with an additional temporary facility in the north of the borough during the development of the new Kensington Centre, although the details of such a facility were not finalised at the time of the Transaction.

Whilst none of the Transactions involved the "*sharing*" of property with partner organisations, in addition to generating revenue for the Council, the Transactions also benefited the provision of education for certain members of the community, through Chepstow House and Notting Hill Prep, as well as providing K&CC the opportunity to continue its investment in community and adult education services in the challenging financial environment. The development of the new library also included plans for a youth centre and Multi Use Games Area which could be used as additional shared community space.

### 3.5 Decision-making processes and scrutiny

Decision-making processes for RBKC were set out in the Constitution which, during the time of the Transactions, included a specific number of principles which were required to be applied in the making of all decisions. These principles are broadly aligned with the questions set out in section 1.2 of this Review and are used as the basis for the analysis in the following section. In summary, the Constitution stated that decisions should be clear, open, proportionate, reasonable, considerate of the impact on other stakeholders and transparent in consideration and rationalisation of different options.

According to the relevant Constitution at the time of the Transactions, decisions were ultimately made by a group of elected Councillors (“**Members**”) (of the political party with the majority of seats in the Council assembly) – the “Executive” or “Cabinet”. Each Cabinet Member had political oversight of a specific area of the Council’s function. During the time of the Transactions, from May 2013 until July 2017, Cllr Rock Feilding-Mellen was the Cabinet Member for Housing, Property and Regeneration.<sup>13</sup> As part of this role, he had political oversight of the Transactions and he was responsible for representing at Cabinet the proposals that the relevant Officers in the Corporate Property Department brought to him. The Corporate Property Department had responsibility for managing the Council’s property portfolio on a daily basis, which included managing the operational estate and the capital programme, as well as considering and assessing options to generate additional income through management of the Council’s asset base. The Director of the Corporate Property Department reported to the Chief Executive, the most senior Officer in the Council.<sup>14</sup>

Key Decisions (“**KD**”), including those surrounding the Transactions, required the placing of the proposed decision on the “Forward Plan”, which is publicly accessible and contained details of all pending decisions to be taken by Cabinet. In addition, two separate groups provided input on the decisions recommended by Corporate Property. First, the Property Policy Board was responsible for updating the Cabinet Member for Housing, Property and Regeneration on the Corporate Property Department’s performance in weekly or bi-weekly meetings. The Property Policy Board comprised of Officers from the Corporate Property Department, but was on occasions attended by other senior

<sup>13</sup> Cllr Tim Coleridge was the Cabinet Member for Housing and Property from the introduction of the Strategy in February 2011 until May 2013 and previously had political oversight of the Corporate Property Department. In May 2013, Cllr Feilding-Mellen was appointed as the Cabinet Member for Housing, Property and Regeneration, assuming oversight of the Corporate Property Department.

<sup>14</sup> The Chief Executive of RBKC is also known as the Town Clerk.



Officers, including the Chief Executive. Secondly, the Leader's Group, a private meeting of RBKC's Cabinet Members, met monthly to discuss upcoming decisions and other initiatives.

### 3.5.1 Analysis of decision-making surrounding the Transactions

The Cabinet approved all of the decisions relating to the Transactions which were presented to it by Officers from Corporate Property. The decisions are considered below in the context of the framework set out in the Constitution.

#### *Clarity of aims and desired outcomes*

As set out in the section "Alignment with Strategy", the aims and objectives of the Transactions were clearly aligned with the Strategy and sought to maximise revenue for the Council from redeployment of the buildings without impacting the provision of services. The factual information to Cabinet in order to allow it to make decisions surrounding the Transactions was presented clearly and contained an analysis of different options and financial implications.

With regards to the clarity of the basis of decisions surrounding the Transactions, Kroll noted from the analysis of internal communications and from interviews with bidders for the INC, that NHP were of the view that there had been a lack of clarity over the extent to which the wider community benefit had been considered in the decision-making process regarding the assessment of the bids for the leasing of the INC. A number of the interviewees in the Review stated that financial considerations had always been the primary driver, and that broad community benefits would ultimately be derived from financial considerations, since more funding would be provided for front-line services if more revenue was generated from the particular Transaction. It should also be noted that, despite the fact that the wider community benefits which were set out by NHP were not ultimately taken into consideration in the bidding process for the INC, the successful bidder, Alpha Plus, had pledged to match community benefits offered by any other bidder. The Cabinet ultimately approved the lease to Alpha Plus based on the understanding that it provided the best consideration for the Council.

#### *A presumption in favour of openness*

The rationale and the objectives behind the three lease transactions, INC, WIC and NKL were publicised through the Westway Newsletter which referred to the Westway Strategy. Seven editions of the Newsletter were sent to approximately 10,000 households between November 2012 and March 2017 within 500 metres of the Westway Area. The newsletters set out the Council's strategy to consolidate its services into fewer buildings and utilise the vacant properties to deliver new community facilities, address shortcomings in existing services and yield a return to help pay for services in the

future. Kroll understands that the plans for the development of the NKL were also publicised in the library, as well as through a designated website.

In addition to the written communication with the public through the Westway Newsletters, the decisions surrounding the Transactions were all included in the publicly available<sup>15</sup> “Forward Plan” as required for Key Decisions. Further, parts of the Cabinet reports surrounding the rationale for the decisions (Part A of the reports) were also publicly available, although certain detailed information (Part B) of the Cabinet reports was in general not available to the public due to the commercially sensitive nature of the information contained therein.

The process for attracting offers for leases of the leased properties was handled through external professional advisors. In the cases of WIC and INC, multiple bidders came forward and an open bidding process was undertaken. Concerns were raised to the Chief Executive of the Council by community activists, following the decision to lease the NKL, about the openness of the bidding process, in particular that best consideration could not have been achieved if there was no open-market exercise. The Council was aware of the particular interest in the existing library site from NHP and obtained professional advice which concluded, following the undertaking of a “red book” valuation, that given the premium which NHP was willing to pay for the site due to its proximity to the school, the Council would not have been able to achieve a better consideration on the open market. The complaint was escalated to the Local Government Ombudsman which concluded that no injustice had occurred to the complainants as a result of the Council's actions.

With regards to the Kensington Centre, the decision to acquire the site was made public on the Forward Plan in March 2016. Following the decision in April 2016, a public announcement of the acquisition was delayed by K&CC to avoid prompting a Judicial Review application following the Cabinet decision, although communications showed that RBKC Officers actively encouraged making an announcement as soon as possible. The acquisition was announced in a *MyLondon* article and the Westway Newsletter in June 2016, prior to the sale completing in July 2016.

<sup>15</sup> The Forward Plan is available on the RBKC website.

### *Proportionality*

Kroll identified that proportionality was considered as part of the decision-making process, particularly in the consideration of options and assessment of the best consideration for revenue generation.

Despite the fact that decisions were made on the basis of achieving best consideration, the question of “Best Value” was not explicitly evident in all of the decision documents reviewed by Kroll. “Best Value” refers to the commitment to consider overall value, including economic, environmental and social value when reviewing service provision. The Department for Communities and Local Government released guidance in September 2011 around “Best Value”, which included a “non-optional duty to consult representatives of a wide range of local persons,” including local community groups.

The Review did not identify any specific mention or consideration of “Best Value” from the perspective of the impact on service provision. It is Kroll’s understanding that the leases involving INC and WIC however, from the perspective of the Corporate Property Department, would not impact service provision, and that the service provision at both the NKL and the Kensington Centre site was projected to remain unaffected, albeit being delivered elsewhere, thus freeing up all or part of the buildings for other uses.

Given the perceived limited impact on the provision of services, there was no detailed consultation with a wide range of local persons conducted prior to the implementation of the Transactions.

### *Reasonableness and rationality (including best consideration)*

The documents which Kroll reviewed demonstrated broadly that the decisions which surrounded the Transactions were based on clear and reasonable assumptions, and the rationality of generating the best return for the Council and to the benefit of public service provision going forward. A summary of the rationale for each of the Transactions is set out below:

**INC** – The Corporate Property Department recommended to grant the lease to Alpha Plus on the basis that it offered the best consideration for the Council. Although NHP offered a marginally higher annual rental figure, the proposal included an eight-month, rent-free period. As such, the Alpha Plus bid was assessed to be the more valuable in terms of total consideration, taking into account the five-year rent review.

**NKL** – The rationale behind the decision to develop a new library facility and redevelop the existing facility for rental stemmed from an assessment that the existing facility was not fit for purpose due to

its layout, i.e. the fact that it was spread over multiple floors which made access challenging for disabled residents and parents with pushchairs, and the fact that this layout led to inefficiencies in staffing costs. The decision to lease the old library also benefited from the rationale that it would generate rental income to protect front-line services. Negotiations around the lease were held off-market and with only one bidder, NHP, due to the rationale that a higher rental value could be obtained because of the rental premium that NHP would be willing to pay, given that they already occupied the adjacent building. Questions were raised about the basis of the determination of fair-market rent, given that the Transaction was negotiated privately between the Council and NHP. Ultimately the rental achieved was higher than a commercial estimate of market rent due to the extra benefit derived from NHP's occupation of the adjacent building.

**WIC** – Once the decision to market the WIC was made, an open market exercise was undertaken by property agency HNG to obtain best offers for the site. The lease was eventually awarded to NHP on the basis that it had offered the highest rental value over the longest lease term.

**The Kensington Centre** – The rationale for RBKC acquiring the Kensington Centre site was to pursue a mixed tenure development, including affordable and private rental sector housing for the Kensington Centre with the view of generating long-term income for the Council. The site would also provide “*valuable strategic decant opportunities*”, in the sense that it could provide temporary accommodation for residents in other Council-run housing which were to be regenerated. The rationale for leasing the site back to K&CC for three years was to allow RBKC time to identify an appropriate development partner, as well as to maintain educational provision at the site in the short-term, and ultimately in the long-term following the redevelopment.

#### *Due consultation and the taking of professional advice from Officers*

For each of the Transactions, professional advice was prepared by Officers and presented to the Cabinet Member for Housing, Property and Regeneration and ultimately to Cabinet with a clear rationale for the proposal to facilitate clear decision making. This included setting out other options and cost implications. For each of the Transactions, Kroll's review identified consultation with other potentially interested stakeholders within the Council, including Legal, Finance, Planning and Education, although in relation to the Kensington Centre we understand there was some feeling internally at the Council that there was insufficient time to assess the financial implications. Other concerns raised by Finance included the funding of the acquisition as it was not initially included in the Capital Programme for the year, and the corresponding tax implications.

With regards to the seeking of professional advice, property consultants were engaged to advise on each of the Transactions. The scope of instructions to the advisors varied according to the particular Transactions. For the INC and the WIC sites, the professional advisors marketed the sites and managed the various rounds of bidding process. For the NKL, professional advisors facilitated a valuation of the property and made recommendations that there was unlikely to be a higher bid than that of NHP, given the benefit which was derived from the site's proximity to the school's existing premises. With regards to negotiating the transaction with K&CC, professional advisors were engaged to negotiate the arrangement with the respective advisors for K&CC and advised on the structure of the deal which provided the most benefit to both parties.

With regards to consultation with the public, Kroll did not identify any public consultation regarding the future use of the WIC or INC buildings. Kroll understands from interviews that, given the sites were in recent times predominantly used for Council back-office / training facilities, the impact on the general public of the relocation of such services was believed to be minimal. For the NKL, no consultation was carried out on the decision to lease the library to NHP. We understand that certain residents of the borough felt that they ought to have been consulted regarding the lease and a petition was presented in October 2016 against the decision to lease the NKL. The petition, which gathered over 1,500 signatures, sought to keep the NKL in public use and reverse the decision to lease it to NHP. This petition was considered by the Full Council which voted to uphold the commitment and decision to lease the NKL on the basis that the new library would be bigger and better, and the lease of the legacy site would also help to generate revenue for front-line services, including libraries.

Kroll identified that a survey of 13,000 residents was carried out relating to the proposed new NKL in July 2016, after the decision to lease the old NKL to NHP in November 2015, which was conditional on the library service being relocated. The survey did not explicitly ask the participants whether or not they were against the relocation of the library or whether they objected to the future leasing by a private school. However, of the 629 respondents, 10% of respondents responded to a question in the survey asking, "*is there anything else you would like to comment on?*" with comments indicating they were against the re-location of the library or that they were against the NKL being used by a private school.

The Cabinet Report on the decision to build a new library in North Kensington referred to an Equality Impact Assessment carried out in connection with the decision. The report referred to a likely positive impact on inequality, as the library was being relocated a short distance from the existing NKL and accessibility would be improved. Kroll did not identify any Equality Impact Assessments carried out in connection with the decisions to lease the INC, WIC and NKL, or the decision to acquire the Kensington Centre for future development.

*Making clear what options were considered and rejected in the making of the decision*

Option appraisals were completed on each of the Transactions and summarised in the Cabinet Reports. The financial implications of the options proposed were included in Part B of the Cabinet Reports, which meant they were not available to the public. In each case, the option which represented the greatest financial return for the Council was the option proposed by the Corporate Property Officers, which was in line with the aims of the Strategy and the Council's obligation to secure "best consideration". Two to three options were outlined in the Cabinet Reports for each of the transactions.

The options outlined in the Cabinet Reports are summarised below:

<b>Transaction</b>	<b>Summary of options (bold indicates chosen option)</b>
The Isaac Newton Centre	<b>Medium term lease (up to 25 years) in current condition.</b> Long term lease (125 years) where buildings would be demolished and redeveloped for a mixed-use scheme.
North Kensington Library	Do nothing <b>Agreement to Lease and Lease based on a significant premium above market value.</b>
Westway Information Centre	Complete approved re-cladding works to external elevations of the WIC without entering into an Agreement to Lease. <b>Approve entering into an Agreement to Lease and Lease and replace elevations.</b>
The Kensington Centre	Sale with planning permission. <b>Retain the site for mixed development.</b> Retain building as a D1 investment.

Kroll identified one instance, relating to the NKL, where an options appraisal was carried out after the decision had been taken to develop a new library and lease the existing facility to NHP. The appraisal sought to review options about the viability of retaining NKL as a public library and assessed three options: a minor refurbishment costing GBP 3 million; a major refurbishment costing GBP 7 million; and a more in-depth major refurbishment costing GBP 10 million. The report concluded that none of the options addressed the issues that existed with NKL, such as the layout of the site, and that RBKC

should continue with its current plans. The basis for the report's commissioning was unclear from Kroll's review of emails and documents, however the conclusion supported RBKC's existing conclusions on the NKL facility.

## 3.6 Scrutiny processes

Aside from the bodies and protocols in place within RBKC that comprise the formal decision-making process, there were also a number of scrutiny committees with focus on specific areas of decision-making. Membership of the committees was proportionate to political representation across all elected Council Members. The scrutiny committees were responsible for holding decision makers to account on behalf of the residents of RBKC and for making recommendations to help develop policies and initiatives that met the Council's objectives. Relevant committees in relation to the Transactions included the Housing and Property Scrutiny committee ("HPSC") and the Cabinet and Corporate Services Scrutiny Committee ("CCSSC"). All Key Decisions which were entered onto the Forward Plan were assigned (by the relevant Officer) a diamond rating from 1-3, which indicated the level of risk of the relevant transaction and the resultant prioritisation for scrutiny, where 3 was high impact / high public interest and 1 was routine / low public interest.

### 3.6.1 Analysis of scrutiny

Internal information reviewed by Kroll during the course of the review demonstrated the following:

#### *The scrutiny process*

For two of the Transactions reviewed, the HPSC was not able to conduct scrutiny in a timely manner, as at that time, the HPSC met only once every two months to scrutinise decisions. As a result, there could be a significant time lag which had an impact on the relevance or impact of the scrutiny around that specific decision.

- For the NKL, the Chair of the HPSC only became aware of the decision to lease the site to NHP seven weeks after it was taken, and stated to a Senior Governance Administrator and the Director of Strategy and Local Services that the Committee would have expressed serious concerns about the lease.
- For the Kensington Centre, the HPSC met three weeks after Cabinet approved the acquisition and a day before contracts were exchanged.

All decisions surrounding the Transactions were assigned a 1 diamond' rating by Officers, meaning they were considered routine or of low public interest. The Chair of the HPSC advised Kroll in interview that the diamond rating system was not the Committee's main method of identifying decisions to scrutinise, and instead they relied on both their own observations of the Forward Plan and information provided to them by Corporate Property Officers. The Chair found that it was in some cases difficult to ascertain which decisions ought to have been considered. Additionally, while the Members of the scrutiny committees were sent details of all Key Decisions in the Forward Plan, the Plan was maintained as a rolling document, so it was not always clear which decisions were most pressing and important for scrutiny.

There was one instance identified where scrutiny chairs from the HPSC and CCSSC disagreed on which committee ought to scrutinise the INC transaction. The Chair of the HPSC queried the interest of CCSSC in the transaction, alleging that the Members were using their position *"to build political momentum in their favour"*.<sup>16</sup> Considering that the mandate of the CCSSC was defined in the Constitution as being, *"the achievement of effective, transparent and accountable decision-making by the Council"*, it did not appear inappropriate for the CCSSC to consider the decision.

#### *Impact of scrutiny on the Transactions in scope*

With regards to the Transactions in scope, when decisions were subject to scrutiny, the findings of the relevant scrutiny committee did not result in any significant change or reconsideration by the Corporate Property Department or the Cabinet itself. For the NKL, the HPSC concluded in January 2016 that it was not satisfied that an adequate competitive process had been followed. For the INC, the CCSSC reviewed the bidding process and recommended that Cabinet reconsider its decision to award the lease to Alpha Plus as there had been a lack of clarity in the process. Despite these recommendations, the Cabinet reaffirmed its decision, based on the understanding that it represented best consideration for the Council.

### 3.6.2 Reform of scrutiny

It should be noted that, following various concerns raised by scrutiny committee Members and opposition Councillors in July 2018, RBKC endorsed a programme of actions in response to an independent review of governance by the Centre for Public Scrutiny. The recommendations of this review were included in a reform of the scrutiny process, with the establishment of an Overview and

<sup>16</sup> The context of this is that the Chair of the CCSSC was an opposition Councillor.



Scrutiny Committee, which had responsibility for overseeing an annual work programme of scrutiny to ensure the achievement of outcomes that matter to local people.<sup>17</sup> Consideration of the effectiveness of the reformed scrutiny programme is out of the scope of this review, but we have been informed that many of the issues identified with scrutiny in relation to the Relevant Transactions have been considered and addressed in subsequent years.

<sup>17</sup> Exhibit 7, RBKC Overview and Scrutiny Committee Report, 'New Model for Scrutiny', 26 September 2019, [weblink here](#)

### 3.7 Involvement of elected Members in the Transactions

Officers from the Corporate Property Department or their appointed agents managed the day to day negotiations and discussions with external stakeholders, including bidders. The Cabinet Member for Housing, Property and Regeneration, Cllr Feilding-Mellen received briefings at Property Policy Board meetings of developments in relation to each transaction and, on occasion, had discussions with external stakeholders / bidders, particularly in response to concerns which were brought to his attention by Council Officers, other Councillors or members of the public. For example, he responded to complaints by NHP relating to the bidding process for the leasing of INC. Cllr Feilding-Mellen stated in interviews that he was not involved in financial negotiations over the bids, and that he only became actively involved in INC once a large number of NHP parents and staff started complaining to Councillors. He asserted in interviews that he supported the lease being granted to Alpha Plus as it represented best consideration for the Council.

Kroll identified concerns raised by certain Councillors that Members were not sufficiently involved in decision-making surrounding the Relevant Transactions. For the INC transaction, two Councillors separately expressed concern in emails to Cllr Feilding-Mellen that, while the bidding process was being undertaken, he had left decisions to be taken solely by Officers of the Corporate Property Department. Considering the roles of Officers and Members as set out in the Constitution, the responsibility for gathering and assessing the bids was that of the Council Officers rather than the Members. Based on internal communications reviewed, Cllr Feilding-Mellen requested clarifications from Officers at the Corporate Property Department at times as to the specific details of the bids, and expressed on several occasions that he believed it was correct for the Officers, as property experts, to run the process.

The Constitution in place at the time of the Transactions set out that the principal role of Officers was to provide the professional advice to allow Members to formulate policy and make decisions. Given that Cllr Feilding-Mellen was involved in a number of direct discussions with the senior management of both NHP and Alpha Plus as well as Second Home, Kroll did not identify anything to support the claim that he was deficient in fulfilling his responsibilities as a Member as defined in the Constitution.

### 3.8 Wrongdoing and alleged conflicts of interest

Kroll did not identify any areas which constituted wrongdoing on the part of Council Officers or Members.

Various allegations concerning potential conflicts of interest of certain Councillors and Council Officers in relation to the Relevant Transactions have been raised by local community organisations. A summary and commentary of these is set out below, although it should be noted that none of these have been substantiated during the course of our Review:

#### *Conflict of interest – Members*

Allegations were made by various community interest groups that Cllr Feilding-Mellen had a personal interest in the development of private educational facilities in the borough because his children were on the waiting list for the schools concerned, particularly NHP and Chepstow House. Documentation reviewed by Kroll showed that Cllr Feilding-Mellen disclosed that his children were on the waiting lists for NHP and for another school run by Alpha Plus and in interview he affirmed that his children were on the waiting list for a number of schools in the area, both independent and state. Cllr Feilding-Mellen asserted that this in no way influenced the identification or selection of potential tenants for the lease properties. Kroll identified a number of examples in the documents where Cllr Feilding-Mellen suggested that non-educational bidders would be suitable for the space: for example he commented to senior officers of Corporate Property that the WIC would be suitable for an “*enterprise hub*”. Additionally, Kroll understands from interviews that the main reason that the most interested bidders were private educational providers was that there was a significant demand for private education school places in the borough, with over 50% of children in the borough being educated privately. For this reason, the schools were willing to offer highly competitive bids to attempt to secure sufficient space for their institutions. Kroll did not identify any evidence in its Review to suggest that any personal interest impacted the decision-making processes behind the award of leases to NHP and Alpha Plus.

#### *Conflict of interest – Political*

The Grenfell Action Group alleged in an online blog that the award of the lease to Chepstow House for the INC transaction was influenced by political considerations, as the owner of Alpha Plus, John Ritblat was a major Conservative Party donor during the relevant period. Kroll confirmed in the public record that the Ritblats and their group of companies have made donations to the Conservative Party. No evidence was, however, identified in our review of documentation or through the interviews conducted that indicated any undue influence or advantage for Alpha Plus in the bidding of the INC site.

#### *Conflict of interest – Tony Redpath*

The Independent Review also identified allegations of a conflict of interest in relation to the Kensington Centre acquisition, specifically that Tony Redpath (“**Mr. Redpath**”), Director of Strategy and Local

Services for RBKC was involved in the decision-making on behalf of K&CC and that this conflicted with his role as an impartial Officer of RBKC. The Officers' Code of Conduct as set out in the Constitution stated that *"Employees of the Council should not place themselves under any financial or other obligation to individuals or organisations such that might influence them or bias their actions in the performance of their official duties"*.

Documents reviewed by Kroll confirmed that Mr. Redpath was appointed a Governor of K&CC at the request of the College, and was asked for his opinion on the Transaction by Corporate Property Officers prior to RBKC's initial offer in November 2015.

Kroll did not identify any evidence to suggest that Mr. Redpath's appointment as a Governor influenced the decision to acquire the Kensington Centre from K&CC. When Mr. Redpath's opinion was requested on the possibility of a transaction, his response was neutral, stating that the merits of any potential collaboration with K&CC should be assessed in the same way as with any other organisation and that it would require demonstrable benefits for both RBKC's financial or policy objectives and for K&CC. No further email correspondence was identified by Kroll that suggested Mr. Redpath had an active role in the decision-making process to acquire the Kensington Centre and he could not recall any further conversations about the acquisition in interview. Mr. Redpath stated in interview that he set out at the outset with management of K&CC that if any conflict of interest were to arise, he would have to separate himself from that particular aspect of K&CC business. Mr. Redpath later stepped back from his role as Governor in February 2016, five months prior to the sale being completed, due to his own identification of a separate conflict of interest as he had taken on a strategic role in the assessment of FE institutions London-wide, the outcome of which could have impacted K&CC.

#### *Conflict of interest – Lambert Smith Hampton*

Lambert Smith Hampton ("**LSH**") entered into a framework agreement with RBKC in 2012 with responsibilities to *"carry out reviews of [RBKC's] property portfolio and be a partner in the delivery of cost savings, efficiencies and new opportunities"*. LSH was also the advisor to K&CC during the time of the Kensington Centre Transaction, upon the recommendation of RBKC since K&CC required professional advice. According to the K&CC Kroll Report, LSH confirmed to K&CC that members of staff involved in the Transaction would not simultaneously act on any engagements with RBKC. In relation to the Kensington Centre Transaction, RBKC took specialist property advice from CBRE.

Kroll identified that LSH was instructed on 6 April 2016 by RBKC to prepare a Marketing Strategy Report in relation to a development at Chelsea Creek, which was completed on 14 April 2016, prior to RBKC and K&CC completing the Transaction. Stephen Armitage from LSH stated that, in line with the

agreement with K&CC, the same members of staff were not involved in the engagement with K&CC and RBKC. Additionally, he stated the active involvement in the negotiation on behalf of K&CC had been completed on 15 March 2016, at which point the matter was passed onto solicitors and therefore there was no breach of the agreement with K&CC.

### 3.9 Cultural considerations

As set out in section 1.2, part of the scope of work was to consider whether the decisions made in relation to the Relevant Transactions reflected a cultural dynamic in place at the time, which may not have considered the broader views of the local community.

Given that the review was limited to only four Transactions, and was predominantly focussed on reviewing internal documentation and communication surrounding those Transactions, the scope to comment on overall cultural considerations is limited, particularly given the complexity and range of service delivery in local government and the plurality of political views. However, Kroll is aware that there has been commentary by some external parties around the culture of how decisions were made. Kroll has considered two themes around these allegations in the context of the documents reviewed and interviews conducted. Details are set out below.

#### *Focus on revenue generation above community impact*

There have been a number of allegations that revenue generation was the sole focus of the Corporate Property Department to the detriment of the provision of community services and the maintenance of historical community assets. As stated in section 3.3, there is a historical and demographic context which meant that the Strategy itself was unpopular in certain parts of the community, which felt that community assets should remain in the community and that the leasing of those assets had a negative impact on the community itself. In a blog post in May 2016 in relation to the leasing of the INC, the Grenfell Action Group draws the conclusion that the disposal of the public resources was based “purely on the profitability of any such action.”

While Kroll’s review did identify that there was a proactive and commercial approach to generating revenue through the leases in scope of the Review (and the acquisition and leaseback of the Kensington Centre), the actions taken by the Corporate Property Department were in line with the Strategy, i.e. to leverage the assets that the Council owned to generate revenue to contribute to a sustainable long-term strategy and ultimately benefit the communities and residents of the borough.

As set out by Michael Clark in his update on the Strategy in February 2015, the Council had achieved its objectives to double the income from property by 2020 in only three years, from the beginning of

the implementation of the strategy in 2011. While the focus on revenue maximisation may have appeared to be the sole focus, the overall objective was, according to documents reviewed by Kroll, to benefit the community as a whole. The maintenance or improvement of service provision in the face of financial challenges demonstrated that the Strategy made a significant contribution to maintaining the revenues of the Council. In terms of the specific uses of the relevant buildings, documents showed a plan to maintain the same level of service provision in each instance at alternative sites.

*Lack of commitment to engagement and dialogue with community groups*

The Grenfell Action blog refers to a culture of “*hostility to the concerns of the general public, and particularly the interests of working-class communities*” in the blog post of March 2016 which refers to the INC, the WIC and the NKL transaction. In documents reviewed by Kroll, while there was a clear rationale for the decisions surrounding the transactions, we did not identify specific details of detailed consultation with community members, other than the communications highlighting the plans in the Westway Newsletters and the public announcements of the planned relocation of the NKL. As is evident from the protests around the library, the petition and the blogs of certain community groups, a number of residents felt that their views had not been taken into consideration and have persistently lobbied to change the policy. In interviews, the view was expressed that, although a number of people may have disagreed with the proposals, they were set out clearly, were based on clear rationale and were ultimately driven by the objective of maintaining council services for the most vulnerable. It should be noted however, that the INC and the WIC were predominantly used for internal Council activities, for which alternative plans had been considered as part of the SPACE programme and the development of the Malton Road Hub. With regards to the NKL, there was a public consultation around the usage of the new library, in which a proportion of people objected to the move or the lease to a private school for the existing NKL.

### 3.10 Summary of overall conclusions

The table below summarises the overall conclusions of the review in the context of the specific questions which were set out in Section 1.2. The summary of conclusions refers to other sections of this Executive Summary where more details can be found relating to the specific question.

<b>Question for consideration</b>	<b>Summary of conclusions and link to relevant section of the Executive Summary</b>
Was there a Property Strategy in place which covered these Transactions and was the Strategy followed in the decisions made to acquire/ lease the properties listed?	This question is covered in section 3.3. There was a strategy in place and this strategy was the main driver of the decisions around the relevant Transactions.
Was a formal options appraisal undertaken prior to each acquisition/lease and was this presented to and approved by Members?	This question is broadly aligned with the principle as defined in the Constitution of “ <i>Making clear what options were considered and rejected in the making of the decision</i> ”, as set out in the sections above. Kroll’s analysis concluded that there was consideration of various options in relation to each of the Transactions. One example was identified when an options appraisal was conducted after the decisions had already been approved, but these broadly supported the context and rationale for the decision.
What were the decision-making/governance processes around the proposed acquisition/lease and what was the extent of Member involvement through the process?	Decision making according to the principles set out in the Constitution and in the context of the Relevant Transactions is considered in section 3.5. The question of Member involvement is considered in section 3.7. The Review did not identify any areas where the decision making processes were not aligned with constitutional requirements set out at the time. With regards to scrutiny of decision-making, the Review identified some weaknesses around the process which meant that at times the scrutiny

	committees were not able to provide useful, timely scrutiny. These are set out in more detail in section 3.6.
Was appropriate financial, property and legal advice sought, given and considered in all cases? Was the advice appropriate to the matters under consideration?	This question is broadly aligned with the principle of good decision-making defined in the Constitution of obtaining “ <i>Due consultation and the taking of professional advice from Officers</i> ”. Consideration was given to other stakeholders within the Council and external advice was obtained for each of the transactions. There were instances noted when there was not enough time for Officers in support functions to provide detailed analysis, particularly in relation to the Kensington Centre.
What other options were considered by Officers of the Council which considered the financial situation and potential non-financial impact?	This question is considered in the section “ <i>Making clear what options were considered and rejected</i> ” as well as in the overall cultural consideration section. Various options were considered for each of the transactions and the decision was made according to the best consideration for the Council.
Were any valuations obtained (if relevant) and were these appropriate and fair?	For the leased properties, professional property consultants were engaged to provide estimates for valuation and options appraisals. For the acquisition of the Kensington Centre, a red book (detailed surveyor) valuation was obtained prior to the acquisition.
How was best consideration (section 123, Local Government Act 1972) for RBKC demonstrated?	This question is considered in the section around the principle of decision making “ <i>Reasonableness and Rationality (including best consideration)</i> ”. With regards to the NKL, questions were raised around how the Council could determine best consideration considering the property was leased off-market. The review identified that professional valuations valued the



	rental value at lower than what was ultimately obtained.
Were lease / rental figures fair to all parties?	This question has been considered in the section around the principle of decision making “ <i>A presumption in favour of openness.</i> ” The review identified that negotiations for the lease of the NKL took place without an open bidding process, although there was a clear rationale for this given the specific interest of NHP in the site. NHP raised a number of concerns about the lack of clarity over the consideration of community benefits in the INC bidding process. Given that the successful bidder, Alpha Plus, also pledged to match any community benefits, the decision was ultimately taken on the basis of best financial consideration.
Did the Transactions offer the best value for RBKC and the residents of RBKC?	This question is partly considered under the best consideration question above, in that the Council made decisions about the Transactions based on commercial criteria. There was evidence that the Transactions were in good faith and founded on the overall intention to maintain the provision of front line services to benefit all parts of the community. The Review did not identify any specific mention or consideration of “Best Value” in the relevant Cabinet Decision Reports, although there was consideration of maintaining or improving service provision.
Was there any indications of wrongdoing or conflict of interest in the way that the Relevant Transactions were handled and ultimately executed?	The review did not identify any indications of wrongdoing. With regards to conflicts of interest, the review did not identify any evidence that the parties concerned exerted any undue influence.

<p>Were there indications that the decisions made in relation to the Relevant Transactions reflected a cultural dynamic in place at the time, which may have not considered the broader views of the local community?</p>	<p>This question is considered in the “<i>Cultural considerations</i>” section. The Review concluded that the culture of attempting to achieve best consideration and make the best use of the asset base was ultimately driven by the Strategy and the context surrounding the funding difficulties which the Council was under. There were, however, some community groups who felt that their voices were not heard.</p>
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## 4. Legal and strategic framework

This section sets out an overview of the legal framework under which local governments, including RBKC, are required to operate and gives an overview of the strategic and contextual framework which was in place at the time of the Relevant Transactions.

### 4.1 Legislation relevant to the transactions

Local authorities are established by statute, and their functions are set out in numerous Acts of Parliament. The scope of this review does not cover a legal analysis or commentary on the legality of the Transactions in scope. However, there are some key areas of legislation which provide a framework for the standards of behaviour which are expected of local authorities as the trustees of public funds, as well as defining the frameworks under which local authorities must develop their strategies or make decisions.

A summary of key areas which are relevant to this Report is set out below. This is not intended to be an exhaustive list, but highlights some of the key themes which are relevant in the context of the analysis of the Transactions.

#### Local Government Act 1972

- Section 2(1) of the Local Government Act 1972 sets out the core principles of the role of local government, namely that local governments are mandated to do anything that is required to achieve the objectives of promotion or improvement of the economic, social or environmental well-being of the area.
- With regards to ethical conduct, each local authority is mandated to have a code of conduct to which Members and co-opted Members are required to adhere, and which should set out the basic ethical principles which the Members commit to.
- Officers of local authorities are required by law to disclose any conflict of interest which may arise through any contractual arrangement that the Council is entering into. The law refers particularly to any “*pecuniary interest*” and does not specifically cover personal non-financial benefit as a result of decisions made.<sup>18</sup>

<sup>18</sup> Exhibit 8, Local Government Act 1972, Section 117, [weblink here](#)

- With respect to the acquisition or disposal of land by local authorities, the law states that land “*may be used for any purpose of the council’s functions*”. With regards to disposal of land, the law sets out that land can be disposed of in any manner that a local authority wishes and that any disposal of land should be undertaken for the best consideration which can reasonably be obtained.
- Certain information is exempt from disclosure to the general public based on a number of defined factors, for example if the information contains any personal data, or if the information relates to the financial or business affairs of any particular person.<sup>19</sup>
- Section 123 of the Local Government Act 1972 sets out that councils may not dispose of land for a consideration “*less than the best that can be reasonably obtained*”, except with the consent of the Secretary of State for Housing, Communities and Local Government.

### **Best Value Statutory Guidance**

The Department for Communities and Local Government released guidance in September 2011 relating to the ‘Duty of Best Value’, which states that councils should “*make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*”. Therefore, councils should consider overall value, including economic, environmental and social value when reviewing service provision. In deciding how to fulfil their obligations, authorities are under a statutory duty to consult representatives of a wide range of local persons. Councils must consult representatives of council taxpayers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services.<sup>20</sup>

### **2004 Planning and Compulsory Purchase Act**

The 2004 Planning and Compulsory Purchase Act (The “2004 Act”) replaced the Unitary Development Plan, the previous formal planning system for local government, with the Local Development Framework (“**LDF**”), a collection of documents maintained by a local authority focused on development objectives and a strategy for achieving them.

<sup>19</sup> Exhibit 8, Local Government Act 1972, a full list can be found in schedule 12A, [weblink here](#)

<sup>20</sup> Exhibit 9, Best Value Statutory Guidance, September 2011, [weblink here](#)

The 2004 Act introduced the concept of “spatial planning” and changed the focus of planning from solely controlling the development of land, towards a wider focus, including taking into consideration how places are used, and how other public services influence the quality of places.<sup>21</sup>

The 2004 Act is relevant to the Independent Review because the planning strategy (“Core Strategy”), as part of the Local Development Framework, the requirement for which was established under the 2004 Act, was taken into consideration as part of the WIC transaction.

### **Town and Country Planning Act 1990**

The Town and Country Planning Act 1990 was cited in a legal consultation in relation to the sale and leaseback of the Kensington Centre. Relevant clauses mandate that local authorities can acquire land for development purposes provided that one or more of the following objectives are met:

- the promotion of improvement of the land and economic wellbeing of the area;
- the promotion or improvement of the social wellbeing of the area; or
- the promotion of improvement of the environmental wellbeing of the area.

### **Equality Act 2010**

The Equality Act 2010 provides legal protection for people from discrimination in the workplace and in wider society. As part of the Act, the Public Sector Equality Duty came into force in April 2011 requiring public bodies to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.<sup>22</sup>

It also requires that public bodies have due regard to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between different people when carrying out their activities.

RBKC’s published guidance states that an Equality Impact Analysis (“EqIA”) ought to be considered when formulating policies, practices or new proposals which will impact communities, such as through service closures or reductions. The EqIA enables Officers to assess whether the impacts are positive, negative or

<sup>21</sup> Exhibit 10, RBKC Local Development Framework 2010, [weblink here](#)

<sup>22</sup> Equality Act 2010, [weblink here](#)

unlikely to have a significant impact on different groups. The guidance states that “*wherever appropriate, the outcome of the EqIA should be summarised in the Cabinet/Cabinet Member report and equalities issues dealt with and cross referenced as appropriate within the report*”.<sup>23</sup>

## 4.2 Consideration of financial factors

It is important to consider the background to the formulation of the strategic direction of the Council which is set out in the following sections. In 2010, following the financial crisis of 2007/8 and the corresponding increase in Government borrowing, the coalition government pursued a policy of eliminating the budget deficit within five years.<sup>24</sup> Part of the mechanism to achieve this was cutting public spending and in the period between 2010 and 2016, which is broadly the timeline during which the decisions around the Transactions were made, Communities and Local Government funding was the hardest hit of all Government Departments in the Treasury Spending Reviews, with a reduction in allocated budget of over 50% over a 5-year period.<sup>25</sup>

With regards to RBKC specifically, the income from general central government grants and non-domestic rates<sup>26</sup> fell from GBP 141.8 million in the year to March 2010 to GBP 101.7 million by March 2016, a reduction of close to 30%. During this time the Council's revenue budget<sup>27</sup> decreased by only 14%. This demonstrates that there was significant increased pressure on RBKC to identify other sources of funding given the reduction in general funding from central government (as well as from pressure to maintain current levels of Council tax).

Between the period 2010 and 2016, the Council significantly underspent its revenue budget by a total value of GBP 91.7 million for the 7-year period (against a total budget of GBP 1.2 billion in the period). This represented an overall underspend against planned revenue activity of around 7%. Across the relevant period, the underspend was either carried forward to the next financial year or transferred to

<sup>23</sup> Exhibit 11, Equality Impact Analysis Tool, undated, [weblink here](#)

<sup>24</sup> Exhibit 12, “At-a-glance: Conservative manifesto”, *BBC News*, 13 April 2010, [weblink here](#)

<sup>25</sup> Exhibit 1, “Spending Review: Department-by-department cuts guide,” *BBC News*, 24 November 2015, [weblink here](#)

<sup>26</sup> NNDR and Non-ringfenced government grants are considered together due to a change in accounting policy with the NNDR retention scheme in 2013 – the source of this is from the financial statements for the years 2010-2016 (Note - Taxation and non-specific grant income). It does not include specific ringfenced grants allocated for specific services or the contribution from council tax, which remained broadly consistent throughout the period.

<sup>27</sup> Revenue budget is net budget, excluding specific grants and other revenue generation – it represents the amount which is funded from Taxation and non-specific Government grants)

a variety of useable reserves, for example the Transformation Fund<sup>28</sup>, the Property Strategy Reserve<sup>29</sup> or the Council's Capital Expenditure Reserve. Although more in-depth financial analysis was not within the scope of the Independent Review and the reasons for the underspend have not been confirmed, it appears that if the budget spend had been met for the relevant period, the Council reserves would have been significantly depleted as the funding gap which was not funded by specific grants, general grants or taxation, widened during this period. Documents examined by Kroll demonstrated that the need to generate revenue from other sources was a contributing factor in the strategic choices set out below.

### 4.3 Consideration of political and demographic factors

There are number of contextual factors that ought to be considered when reviewing decisions taken by RBKC during the relevant period of the Transactions. RBKC has been governed by a Conservative Party majority since 1964. The May 2014 Local Elections resulted in the Conservatives holding 37 of the 50 seats in the Council. Kroll understands from interviews that this political stability allowed the Council to consider longer-term strategies than other local authorities without the threat of redrawing plans because of political change / uncertainty.

The demographic of RBKC, however, is more polarised than other councils in London and in the UK. The average earnings are significantly higher than the national or London average, and the demand for private education is significant, with, according to interviews undertaken by Kroll, over 50% of children in the borough attending fee-paying schools, compared with a UK average of only 6.5%.<sup>30</sup>

Against this backdrop, wards situated towards the north of the borough, such as Golborne, Dalgarno and St. Helen's, have been rated as some of the most deprived areas in the UK and ranked in the top 10% of deprived LSOAs by rank in 2011.<sup>31</sup> As of September 2020, these wards were all represented by Labour Councillors.<sup>32</sup> The North Kensington area, where the properties involved in the Relevant

<sup>28</sup> Useable reserves for the Transformation Fund include: (i) resources for 'invest to save' opportunities identified as part of the business and financial planning processes (cost reduction); (ii) resources to support the introduction of transformative projects (local initiatives); and (iii) resources to meet the costs of potential job losses (severance).

<sup>29</sup> Useable reserves used to meet the cost of feasibility studies and condition surveys to assist in asset management and capital budget planning.

<sup>30</sup> <https://www.isc.co.uk/research/>

<sup>31</sup> A Lower Layer Super Output Area (LSOA) is a geographical hierarchy designed to improve the reporting of statistics in small areas within England and Wales.

<sup>32</sup> Exhibit 13, Deprivation in the Tri-Borough Area, March 2011, [weblink here](#)

Transactions are situated, are based in the Golborne and Colville Wards in the northern part of the borough.

While the focus of this review does not include the equity of provision of Council services between the various wards in the borough, it is evident from our Review that despite the overall perception of a maintenance and even improvement of provision of Council services during the period, there were some parts of the community which held the view that the Council's objectives of regenerating North Kensington did not take into account the hardships and need for better community infrastructure in the more disadvantaged wards.

For example, the Kensington Labour Group published a number of statistics in February and March 2014 highlighting the disparities between the north and south of the borough.<sup>33</sup> Examples of these have been included below:

- The RBKC average for child poverty was approximately 28%. In Henry Dickens Court, Norland, the average was 57.6%. Henry Dickens Court is a housing estate located in the Notting Dale Ward.
- Life expectancy in the Golborne Ward was 72 years for men, whereas it was 92 years in Hans Town, Knightsbridge.
- 63% of children and young people between the ages of 0 and 19 in the Golborne Ward lived in overcrowded homes, compared to 19% in the Campden Ward.

## 4.4 Strategic frameworks and external influence

Within the overall legal framework highlighted above, RBKC developed a number of strategic plans which considered the most effective way to deliver on the statutory mandate of “*promoting or improving the economic, social or environmental well-being of the area*”.<sup>34</sup> The Independent Review has focussed particularly on the strategic plans relating to property in the context of the Relevant Transactions, as set out in the sections below.

### 4.4.1 Corporate Property Strategy 2020

In 2010, the Council had 125 operational units housing 166 operations valued at GBP 606 million, with an annual operating cost of around GBP 17 million, as well as an investment portfolio of 418 interests

<sup>33</sup> Exhibit 14, “*The Most Unequal Borough in Britain – revisited*”, Cllr Dent Coad, 21 October 2020, [weblink here](#)

<sup>34</sup> Exhibit 8, Local Government Act 1972, defined as one of the core responsibilities of local governments, [weblink here](#)



with a value of GBP 147 million, generating an income of approximately GBP 7 million per annum.<sup>35</sup> The portfolio was fragmented and devolved throughout the organisation, which made it difficult to assess / monitor the extent to which property management contributed to overall Council objectives. In 2010, the Council commissioned property consultants King Sturge to review this property portfolio and identify sites which were the worst-performing operating properties and which could be leased or sold in order to generate long-term revenue for the Council and therefore to protect front-line services (the “**King Sturge Review**”).

Three of the Transactions which are the subject of this review (NKL, WIC and INC) were classified as surplus to requirements in the King Sturge review.

Taking into consideration the advice obtained from the King Sturge review, in February 2011, RBKC adopted the Corporate Property Strategy 2020 (“**the Strategy**”), led by RBKC’s Corporate Property Department. The Cabinet agreed that creating this strategy would provide a long-term framework for how the Council managed its property portfolio, and help it align with the Council’s commitment to maintain its provision of public services.<sup>36</sup>

The Strategy had three main objectives for its future commercial property portfolio:<sup>37</sup>

- **Cost and space efficient** – RBKC would use floor space more efficiently, resulting in a reduction of floor space and buildings occupied. RBKC would also seek to increase income from surplus operational property to contribute towards the costs of front-line services. The savings would be in line with targets set by RBKC.
- **Suitable and sufficient** – RBKC would ensure properties are fit for purpose, in the right locations and of the right quality to provide for the needs of customers and staff.
- **Shared** – Where possible, property would be shared with partner organisations.

The Strategy stated that commercially let properties would be subject to the Local Development Framework (see below) and “*other community considerations*”.<sup>38</sup>The Strategy included a significant

<sup>35</sup> Exhibit 15, RBKC Report by the Executive Director for Finance, Information Systems and Property, 17 February 2011, [weblink here](#)

<sup>36</sup> Exhibit 15, RBKC Report by the Executive Director for Finance, Information Systems and Property, 17 February 2011, [weblink here](#)

<sup>37</sup> There were two additional objectives of the Strategy that are ancillary to the review: properties being sustainable and flexible as well as being energy and water efficient.

<sup>38</sup> Exhibit 4, Corporate Property Strategy 2020, [weblink here](#)

change programme around the Westway area, which became known as the Westway Strategy.<sup>39</sup> The leasing of the INC, the WIC and plans for a new library to replace the NKL were part of the Westway Strategy, amongst plans for other properties such as the Malton Road Hub.

In February 2015, Michael Clark, the Director of Corporate Property, provided an update on the performance of the Corporate Property Department in pursuit of the Strategy. Mr. Clark set out that by 2014 RBKC had achieved GBP 9.2 million per annum in income from the property portfolio, against the Council's target of GBP 6.27 million per annum at the time. Mr. Clark summarized that "*we effectively doubled the Council's income in three years, six years ahead of schedule*". Mr. Clark also suggested an amended target of GBP 20 million per annum in income and savings by 2020 for the Corporate Property Department.<sup>40</sup>

#### 4.4.2 SPACE Programme

In February 2009, RBKC's Cabinet approved funding for the SPACE Programme. The Programme was originally focussed on the refurbishment of Kensington Town Hall, where the majority of the Council's staff were based and provided "*a great opportunity to re-think the way office space was provided and utilised*".<sup>41</sup> The project had the objective of creating energy and space efficiencies and increasing the number of people working out of the Kensington Town Hall from 1,058 to 1,607.

The programme was considered successful and was expanded to include refurbishing other offices where Council staff were based. The SPACE Programme concluded in November 2013 "*as a result of creating and capitalising on opportunities to condense work phases and accelerate current moves*".<sup>42</sup> The transition of Council staff moving into a newly refurbished hub at 2 Malton Road ("**the Malton Road Hub**") in June or July 2014 was confirmed as a 'post programme activity' to be completed after November 2013. The objective of the construction of the Malton Road Hub was to consolidate Council offices into one modern facility and release other council properties that consequently became surplus to requirements, including the INC and WIC, to be considered for lease.

<sup>39</sup> The Westway area comprises the surrounding areas of the Westway, an elevated dual carriageway section of the A40 road in West London running from North Kensington to Paddington.

<sup>40</sup> Exhibit 5, Property Portfolio Performance Update by the Director of Corporate Property and Customer Service, undated.

<sup>41</sup> Exhibit 16, Report by the Space Programme Manager, 15 November 2010, [weblink here](#)

<sup>42</sup> Exhibit 17, Closure Report for the SPACE Programme, 6 November 2013, [weblink here](#)

#### 4.4.3 Local Development Framework, Core Strategy 2010 and the Consolidated Local Plan 2015

Following the implementation of the Local Development Framework (“LDF”) under the 2004 Planning and Compulsory Purchases Act, RBKC adopted its Core Strategy, a part of the LDF, on 8 December 2010 (the “**Core Strategy**”).<sup>43</sup>

This document sets out the following three planning policy objectives relating to the North Kensington Area:<sup>44</sup>

- to stimulate regeneration in North Kensington through the provision of better transport, better housing and better facilities;
- to enhance the reputation of national and international destinations by supporting and encouraging retail and cultural activities; and
- to uphold residential quality of life so that [the borough] remains the best place in which to live in London, through cherishing quality in the built environment, acting on environmental issues and facilitating local living, including through strengthening neighbourhood centres.

The Core Strategy set out a specific strategy for Westway – that it “*will be transformed from an oppressive negative influence into one which celebrates public life and creativity*”. In the years following the establishment of the Core Strategy 2010, the Council was facing increasing pressure from Central Government and the Greater London Authority to increase its housing capacity. The GLA completed a Strategic Housing Marketing Assessment in 2013, which found that London required approximately 62,000 more homes per year in order to accommodate its growing population.<sup>45</sup> The Core Strategy also included a commitment to build 2,500 new homes in the north of the Borough by 2028.

RBKC, and particularly its Corporate Property Department, identified potential regeneration opportunities in North Kensington as a way of providing this housing supply as well as meeting the objectives of the Core Strategy and the Property Strategy. Plans to stimulate regeneration in North Kensington were later codified in the Consolidated Local Plan 2015 (“**the Local Plan**”) which set out future development plans for the area and a housing target of building 5,850 new homes by 2021, 50%

<sup>43</sup> Exhibit 18, RBKC Local Development Framework Core Strategy, [weblink here](#)

<sup>44</sup> Exhibit 18, RBKC Local Development Framework Core Strategy, [weblink here](#); the objectives are summarised for the purpose of this Independent Review – full detail can be found in the LDF Core Strategy 2010.

<sup>45</sup> Exhibit 19, Greater London Authority Strategic Housing Market Assessment 2013, [weblink here](#)

of which would be affordable housing.<sup>46</sup> The Relevant Transactions all take place under the context of this commitment to the regeneration of North Kensington.

The objective of the Local Plan was to secure better transport, housing and social infrastructure for North Kensington in the following 20 years which would “*have a positive influence on deprivation and both physical and mental health*”.<sup>47</sup> It should be noted that whilst the Kensington Centre was referred to in the Local Plan, the Plan made specific reference to the building “*not being programmed for redevelopment unless it is beneficial to the wider community and sufficient funding is identified*”.<sup>48</sup>

The Local Plan was brought into place in July 2015 as an updated version of the Core Strategy, in line with changes in national policy, which referred to the terminology of a Local Plan rather than a Core Strategy.

#### 4.4.4 The Community Strategy

The Community Strategy was adopted in 2008<sup>49</sup> and set out goals that all the local organisations and individuals whose activities had an impact on quality of life in Kensington and Chelsea could work towards. It details the “Kensington and Chelsea Partnership,” which was an umbrella group chaired by the former Leader of the Council, bringing together various stakeholders in the community to achieve the principles of:

- Valuing the rich diversity of people living and working in the borough;
- Acting in a positive way so that all sections of the community are able to play a part in improving the quality of life in Kensington and Chelsea; and
- Adopting a structure which is representative of the various stakeholders, with open and transparent decision-making and a commitment to community consultation and involvement.

The Community Strategy sets out the challenges faced in North Kensington, acknowledging that “*the highest levels of deprivation are found in North Kensington, highlighting the need to focus on this area*”.

<sup>46</sup> Affordable housing is defined in the National Planning Policy Framework (“NPPF”), published by the Ministry of Housing, Communities & Local Government, as “housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers)” and which complies with one or more of a series of definitions as set out in Annex 2 of the NPPF

Exhibit 20, Ministry of Housing, Communities & Local Government, National Planning Policy Framework, [weblink here](#)

<sup>47</sup> Exhibit 21, RBKC Consolidated Local Plan, Section 3.1.5, [weblink here](#)

<sup>48</sup> Exhibit 21, RBKC Consolidated Local Plan, Section 21.2.8, [weblink here](#)

<sup>49</sup> [https://www.rbkc.gov.uk/wamdocs/community\\_strategy2008-181.pdf](https://www.rbkc.gov.uk/wamdocs/community_strategy2008-181.pdf)

It states that the “*Partnership plays an important role in working to direct mainstream resources [...] towards co-ordinated and targeted initiatives that address the causes and consequences of deprivation in North Kensington*”.

Particularly relevant to this Report are the sections of the Community Strategy which consider Homes and Housing. The Community Strategy recognises that a number of the borough’s housing estates are in significant need of improvement due to aging stock. This is relevant to the Kensington Centre, which was planned to be redeveloped into a mixed-use building, and which would be used as a decant site while improvements were made to existing social housing stock.

#### 4.4.5 Bi- and Tri-Borough Shared Service Agreements

RBKC also entered into Bi- and Tri-Borough Shared Services Agreements with the London Borough of Hammersmith and Fulham and Westminster City Council during the period of the Transactions, starting in June 2011.<sup>50</sup> The programme sought to combine certain services from the three London boroughs to deliver savings without compromising the provision of services.

<sup>50</sup> Exhibit 6, Tri-Borough Executive Decision Report for Corporate Services, 17 April 2013, [weblink here](#)

## 5. RBKC’s constitutional framework and decision-making process

The Council is governed by a Constitution which sets out the framework and ethical principles around how decisions are made, and the procedures that are followed to ensure that decisions taken by the Council are “*efficient, transparent and accountable to local people*”.<sup>51</sup>

The Constitution requires the Council to maintain and update the Constitution periodically to ensure that the aims and principles of the Constitution are achieved.<sup>52</sup> Consequently, Kroll has reviewed a number of versions of the Constitution written between 2012 and 2017 (collectively “the **Constitution**”).

The sections below give an overview of the decision-making processes of the Council during the time of the Transactions as set out in the Constitution and introduce the relevant committees which had responsibility for scrutiny in relation to the Relevant Transactions.

### 5.1 Approach to decision-making

The principles surrounding the decision-making process at RBKC are set out in the Constitution. During the timeline of the Transactions, the Constitution set out the framework of decisions made by the Council in the context of the principles set out below:

- clarity of aims and desired outcomes;
- A presumption in favour of openness;
- proportionality, so that the action taken is proportionate to the desired outcome;
- reasonableness and rationality, as set out in the Wednesbury Principles;<sup>53</sup>
- due consultation and the taking of professional advice from Officers; and
- making clear what options were considered and rejected in the making of a decision and the reasons behind it.<sup>54</sup>

<sup>51</sup> Exhibit 22, RBKC Constitution (June 2012 and February 2016), Part 1, Article 1.02.

<sup>52</sup> Exhibit 23, RBKC Constitution (February 2016), Part 2, Article 14.01.

<sup>53</sup> The Wednesbury Principles set out an overriding principle and threshold for unreasonableness, which was defined as being “*so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*”. Exhibit 24, RBKC Constitution (February 2016), Part 2, Article 12.02.

<sup>54</sup> Exhibit 24, RBKC Constitution (June 2012, December 2014 and February 2016), Part 2, Article 12.02.

## 5.2 Structure of decision-making

### 5.2.1 The Executive

The Executive is responsible for taking the majority of the Council's decisions.<sup>55</sup> It is comprised of elected officials from the party which has won the majority of seats in Local Government elections. With respect to RBKC, the Conservative Party had the majority of the Council seats throughout the timeline of the Relevant Transactions. During this time, when the Executive met, it was referred to as 'the Cabinet', and the individuals in attendance as 'Cabinet Members'. Each Cabinet Member had oversight of a particular function of the Council, such as education or housing. Typically, the Executive comprised between eight and ten Cabinet Members. During the time of the Transactions, the Cabinet Member for Housing, Property and Regeneration was Cllr Rock Feilding-Mellen, who was also the Deputy Leader of the Council. The Cabinet was renamed the Leadership Team in 2017. .

### 5.2.2 The Corporate Property Department

The Corporate Property Department had the mandate to "*ensure that the Council's property is used to its full potential, and to advise on all property matters*".<sup>56</sup> Specific areas of relevance to the Transactions which the Corporate Property Department has are:

- undertaking the estate management of the Council's commercial property portfolio including leasehold properties held to enable the Council to discharge its statutory duties and policies;
- identifying opportunities to maximise the use of the Council's property portfolio to generate additional income;
- acquiring accommodation for Council departments and voluntary groups;
- disposal of surplus Council property; and
- negotiating on all aspects of property management on behalf of the Council and its Business Groups.

<sup>55</sup> Certain functions were reserved for Full Council (i.e. all 50 Councillors), committees or sub-committees. These functions are set out in Exhibit 25, RBKC Constitution (October 2012, December 2014 and February 2016) in Part 2, Article 7.

<sup>56</sup> RBKC Corporate Property website contact page, [weblink here](#)

### 5.2.3 Key Decisions

The Relevant Transactions covered in this report involved “*Key Decisions*” as defined in the Constitution at the time as those which (i) involve expenditure of GBP 100,000 or more;<sup>57</sup> and (ii) were determined as likely to have a significant impact on the community in one or more electoral wards.

According to the Constitution, Key Decisions were taken by the Cabinet, and the Council was required by the Constitution to give a minimum of 28 days’ notice of any Key Decision to the public before the decision was approved by Cabinet. Notice was provided by publishing the decision on the Forward Plan, a list of decisions which were planned for the following four months. The Forward Plan was published on the Council’s website and included details of which body would make the decision, the relevant contact Officer, the earliest date the decision could be made and details of any planned consultation. The Cabinet was required by the Constitution to provide a written statement for every decision taken, which should have included a record of the decision and the reasons behind it, amongst other requirements. Whilst the Constitution set out that the written statement, including these details would “*comprise the minutes of the meeting*”.<sup>58</sup>

Once a decision was made by Cabinet, the decision could be called-in up until 5pm on the day following the Cabinet meeting. If the Director of Strategy and Local Services did not receive a request for call-in, then the decision would be “*implemented*”, or actioned. When a decision was called-in, the Cabinet was notified and the implementation of the decision was deferred for five days to allow the scrutiny committee to consider the matter and to possibly ask the Cabinet to reconsider its decision.<sup>59</sup>

### 5.2.4 Scrutiny

Decisions taken by the Council were subject to scrutiny from committees (“**Scrutiny Committees**”) which were made up of Councillors from outside of Cabinet. Scrutiny Committee meetings were open to the public. Each committee determined its own method of working, including when/which Key Decisions it wished to scrutinise.<sup>60</sup> Membership of Committees was proportionate to the political representation across the elected Membership. The primary role of a Scrutiny Committee was to hold decision-makers to account on behalf of borough residents, and to make recommendations to the

<sup>57</sup> Although at the time of the Relevant Transactions, there was no reference to revenue or capital spend with regards to Key Decisions, this was revised later on to define as a Key Decision any capital spend and / or sale of property or interest in property (e.g. leases) to the value of in excess of GBP 1.5 million.

<sup>58</sup> Exhibit 25, RBKC Constitution (October 2012, December 2014 and February 2016), Part 2, Article 7.07.

<sup>59</sup> Exhibit 26, RBKC Constitution (October 2012, December 2014 and February 2016), Part 2, Article 7.10(h)

<sup>60</sup> Exhibit 27, RBKC Constitution (June 2013, May 2015 and February 2016), Part 2, Section 6.12.



Executive and Officers to help develop policies and initiatives that met the Council's aims and objectives.

At the time of the Relevant Transactions, there were five Scrutiny Committees in the Council.<sup>61</sup> The committees were led by the Scrutiny Steering Group (the "SSG"), which had overall responsibility for coordinating scrutiny and was made up of the Chairs of the other committees.<sup>62</sup>

The Housing and Property Scrutiny Committee (the "HPSC")<sup>63</sup> was responsible for scrutinising decisions involving the Corporate Property Department, including housing strategy, development and corporate asset management.

The Cabinet and Corporate Services Scrutiny Committee (the "CCSSC") was responsible for reviewing areas of corporate management at the Council, including decision-making processes, budgeting and approach to best value.

In order to assist the Chairs of Scrutiny Committees and focus scrutiny on the most important areas, all decisions entered onto RBKC's Forward Plan were assigned a 'diamond' rating by the relevant Officer from the relevant department based on the level of impact and/or public interest. The classification was approved by the relevant Chair.

The classification for ratings was as follows:

- ◇◇◇ (3 diamonds) - High impact/high public interest: A key decision that is likely to have a major impact on service users, residents or businesses and where there is a prospect of significant public interest.
- ◇◇ (2 diamonds) - High impact/low public interest: Such a key decision would meet all the above criteria on impact, or would be expected to be of particular public interest.
- ◇ (1 diamond) - Routine/low public interest: A key decision that is of a relatively routine nature.<sup>64</sup>

<sup>61</sup> Housing and Property Scrutiny Committee, Adult Social Care and Health Scrutiny Committee, Cabinet and Corporate Services Scrutiny Committee, Family and Children's Services Scrutiny Committee, Public Realm Scrutiny Committee.

<sup>62</sup> Exhibit 28, RBKC Constitution (June 2013, May 2015 and February 2016), Part 2, Article 6.02

<sup>63</sup> Eight conservative, three Labour Members

<sup>64</sup> Exhibit 29, Key Decision Diamond Rating Criteria

## 5.2.5 Decision-making processes and consultation panels undefined in the Constitution

Kroll identified a number of advisory panels related to Corporate Property which were not defined by the Constitution but were minuted, with these minutes being circulated within the Corporate Property Department.

### 5.2.5.1 Property Policy Board

It is Kroll’s understanding that during the period in which the Relevant Transactions took place, any major decision relating to Corporate Property should have been discussed at the Property Policy Board (the “**PPB**”). The Property Policy Board was an advisory panel that provided weekly or bi-weekly updates to the Cabinet Member for Housing, Property and Regeneration, deputised by the Town Clerk and Executive Director of Finance. Officers from Corporate Property whose projects were likely to go before Cabinet also attended.

According to the Terms of Reference for the PPB, the scope of the board covered all Corporate Property activity and property assets of RBKC relating to: operational property; investment portfolio; facilities; capital projects; school capital development; and housing assets used for operational purposes/redevelopment opportunities. The main roles of the PPB involved the development of the Corporate Property Strategy, including setting the long-term vision or direction for all property assets, as well as monitoring and reporting on their strategic performance.<sup>65</sup>

The membership of the PPB comprised of the following Officers and Members from RBKC:

<b>Full Time</b>	<b>Optional</b>
Cabinet Member for Housing, Property and Regeneration (Chair)	Cabinet Member for Adult Social Care and Public Health
Town Clerk (Deputy)	Cabinet Member for Education and Libraries
Executive Director of Finance (Deputy)	Cabinet Member for Environment, Environmental Health and Leisure
Bi-Borough Executive Director of Environment	Cabinet Member for Families and Children

<sup>65</sup> Exhibit 30, Property Policy Board Terms of Reference.

Bi-Borough Executive Director of Transport	Cabinet Member for Planning Policy, Transport and Arts
Director for Corporate Property and Customer Services	Any Cabinet Member (if they wished to attend)
Executive Director of Planning and Borough Development	Any other Member at the discretion of the Chair
Head of Housing	PCT; Police; TMO; adjoining boroughs
Tri-Borough Director of Children's Services	
Tri-borough Director of Libraries and Archives	
Tri-Borough Director of Public Health	
Tri-Borough Executive Director of Adult Social Care	

### 5.2.5.2 The Leader's Group

The Leader's Group was a group of Cabinet Members which met privately to debate forthcoming decisions and to receive reports on ongoing initiatives which were being progressed by the Council.

## 5.3 Member/Officer responsibilities

### 5.3.1 Members

Members, also known as Councillors, are elected individuals who are accountable to the electorate for their actions. The section below provides a high-level summary of the key responsibilities of Councillors, as set out in the relevant Constitution and as relevant to the Transactions. This is intended to provide a framework for the cultural responsibility of Members rather than an exhaustive list of responsibilities against which the Relevant Transactions have been assessed.

Councillors were required under the Constitution:<sup>66</sup>

- to carry out a number of strategic and corporate management functions collectively as the ultimate policy-makers;
- to represent their communities and bring their views into the Council's decision-making process;
- to deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- to balance the different interests identified within the ward they represent and to represent the ward as a whole;
- to be involved in decision-making;
- to be available to represent the Council on other bodies; and
- to maintain the highest standards of conduct and ethics.

### 5.3.2 Officers

According to the Constitution, Officers, or staff, were responsible for giving advice, implementing decisions and managing the day-to-day delivery of services. Officers had a specific duty to ensure that the Council acts within the law and manages its resources wisely. A high-level summary of some of the key responsibilities is set out below. As above, this is intended to provide a framework for the ethical responsibility of Officers rather than provide an exhaustive list of particular responsibilities against which the Relevant Transactions have been assessed. The Officers are required under the Constitution:

<sup>66</sup> Exhibit 31, RBKC Constitution (June 2012, January 2015 and February 2016), Part 2, Article 2.03

- To give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality.
- To serve the Council as a whole. It follows that they must serve all Councillors and not just those of the majority party and must ensure that the individual rights of all Councillors are respected.
- To follow every lawful expressed policy of the Council and to not allow their own personal or political opinions to interfere with their work.
- To remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.
- All Officers must obtain consent of their relevant superior Officer to take any outside employment. All Officers should be clear about their contractual obligations and should not take outside employment which conflicts with the Council's interests.<sup>67</sup>

<sup>67</sup> Exhibit 32, RBKC Constitution (June 2012, December 2014 and February 2016), Part 5B

## 6. Overview of transactions

The table below sets out the broad timeline and high-level overview of the Transactions.

<b>Transaction</b>	<b>Relevant time-period for analysis and decisions</b>	<b>Nature of transaction</b>
The Isaac Newton Centre (“ <b>INC</b> ”)	February 2012- March 2014	The INC was leased to Alpha Plus, the owner of an independent prep school in the borough.
North Kensington Library (“ <b>NKL</b> ”)	February 2012- November 2015	The Library was leased to Notting Hill Prep School (“ <b>NHP</b> ”). <sup>68</sup>
Westway Information Centre (“ <b>WIC</b> ”)	Late 2012 - November 2015	The Westway Information Centre was leased to NHP. <sup>69</sup>
The Kensington Centre, Kensington & Chelsea College (“ <b>K&amp;CC</b> ”), (“ <b>Kensington Centre</b> ”)	November 2012 - July 2016	RBKC acquired the Kensington Centre from K&CC.

The following sections set out the analysis of each of the Relevant Transactions in turn.

<sup>68</sup> The decision to lease the Library was abandoned in September 2017.

<sup>69</sup> The school moved into the building in 2017.

## 7. Isaac Newton Centre

This section focuses on the 2014 leasing of the Isaac Newton Professional Development Centre (“**INC**”) to Alpha Plus Group (“**Alpha Plus**”). The INC is owned by RBKC and previously housed teacher-training and other educational support and social programmes. The INC was historically a community school operating under a number of names including Portobello Road School and the Isaac Newton School for Boys. This Transaction has attracted controversy around the award of the lease arising from allegations that:

- Cllr Feilding-Mellen was predisposed towards private schools in the borough because his two children were on waiting lists for these schools;
- RBKC was unfairly influenced in its selection of a tenant by bidders’ political donations; and that
- when assessing competing bids from private schools, RBKC improperly prioritised financial considerations and did not sufficiently take into account the schools’ contributions to their local community.

Whilst taking the above allegations into consideration, our approach has focussed on the following areas: the formal decision-making process surrounding the lease, including RBKC’s demonstration of best consideration and best value; internal consultation and scrutiny; the involvement of external advisors; and RBKC’s community engagement before and during the Transaction.

### **Decision-making and timeline**

Following the King Sturge review of the Council’s property portfolio and considering the implementation of the SPACE Programme, the INC was classified as surplus to the Council’s operational requirements, meaning its release from RBKC ownership could save the Council running costs and earn revenue to support front-line service delivery. In 2012 and 2013, a number of options were considered by the Corporate Property Department for the INC site, including sale to a private developer, leasing to a private school and development into rented housing. Various lease structures were also considered, including a long-term lease for private redevelopment and a shorter lease for the site in its current form. An offer to purchase the site made by a private company was rejected in early 2013 on the basis that it did not offer the best long-term value to the Council and the Corporate Property Department recommended in the summer of 2013 to look instead at leasing options.

The tender process was marketed by HNG Chartered Surveyors (“HNG”), a real estate agent, and ran between September and December 2013. During this time, the Corporate Property Department had also been negotiating with one of the bidders, Notting Hill Prep School (“NHP”), on a separate potential lease of part of the INC car park, which led to some concerns from Alpha Plus that the Council was too close to NHP and likely to give favourable terms to them. The Corporate Property Department ultimately recommended to Cabinet in December 2013 that the lease be awarded to Alpha Plus, the owner of private school Chepstow House, which would occupy the site, on the basis that the obtainable rent over 10 years offered the highest financial return to the Council over this period.

Following the recommendation, a number of concerns were raised by NHP. First, NHP complained that the award of the lease to Alpha Plus threatened its survival, as its existing site was spread over two buildings immediately adjacent to and across the road from the INC. Further, NHP alleged that there was a lack of clarity over whether “*community benefits*” had been considered in the awarding of the lease. NHP complained that the community benefits included in their offer, such as providing bursaries and sharing facilities with a youth centre, were not considered. In March 2014, a representative of HNG denied in email correspondence with a Senior Development Surveyor from RBKC that they had been misleading or unclear with regard to the assessment criteria.

The Corporate Property Department defended its recommendation to lease the site to Alpha Plus, emphasising that financial considerations had always been the primary drivers in the decision-making process. In an email from Michael Clark, the Director of Corporate Property and Customer Services, to Cllr Feilding-Mellen dated 17 March 2014, Mr. Clark questioned the basis for the complaint, suggesting that NHP had always understood that community benefits were outside the bidding criteria. Cllr Feilding-Mellen also noted in an email to Cllr Nicholas Paget-Brown, the Leader of RBKC, on 17 February 2014 that Alpha Plus had matched the community benefits offer put forward by NHP. The Property Particulars document, sent to prospective bidders by HNG, did not include any detail about the criteria on which the bids would be assessed.

In order to address NHP’s complaint, RBKC engaged a QC in February 2014 to provide a legal opinion on the Officer’s recommendation to award the lease to Alpha Plus. This opinion concluded that the bid submitted by Alpha Plus represented best consideration and that assessments of best consideration should be made purely on the basis of commercial value and not on social value, unless there was a corresponding tangible commercial value. Cllr Feilding-Mellen reiterated this view in other internal communications, arguing that the best way to achieve social and environmental well-being in the community was to increase the funds available to run Council programmes.



The full Cabinet was originally scheduled to meet on 24 February 2014 and make the decision to award the lease to Alpha Plus. However, the final decision was delayed for several weeks, as NHP submitted an additional bid with a higher rental figure, asking for the bidding to be reopened, and filed a petition to the Council which repeated NHP's concerns about the bidding process and argued that leasing the site to Alpha Plus would result in a serious strain on road traffic. The Corporate Property Department sought internal legal advice, which concluded that reopening bids would contravene the agreed tender process. The CCSSC met on 17 March 2014 to review the bidding process and recommended that Cabinet reconsider its decision to award the lease to Alpha Plus as it found that there had been a lack of clarity in the process. Following this call-in, the Cabinet confirmed its decision on 20 March 2014 to lease the INC to Alpha Plus, based on the understanding that this provided best consideration for the Council.

### **Internal consultation and scrutiny**

Kroll identified documents which demonstrated that internal consultation took place within RBKC as to the decision to offer a lease on the site, as well as to award the lease to Alpha Plus, particularly with the Education and Legal Departments. The case was also considered by two Scrutiny Committees.

Councillors for the Education Department had requested to be kept informed of the bidders' details during the initial rounds of the bidding process in November 2013. Corporate Property conducted some non-binding consultation on the top seven bids, and then the final three bids, with the Education Department in November and December 2013, stressing that evaluations by the Education Department would not form part of the assessment criteria. Email communication in mid-December 2013, during the finalisation of the bid process, showed that the Education Department had concluded that the educational provisions of the top three bidders were very similar.

The Corporate Property Department consulted the internal Legal Department on a number of occasions, including when NHP offered an increased, unsolicited bid in March 2014. The Legal Department deferred judgment back to the Corporate Property Department on this matter but advised that reopening the bids after the process had concluded could prompt any of the bidders to file for judicial review. The Legal Department was also consulted in relation to whether community benefit should be considered and advised that this should not be taken into account as the bids had been sought on a commercial basis.

The transaction was subject to scrutiny from the HPSC and the CCSSC. Documents we have seen showed some differences of opinion as to which Scrutiny Committee was appropriate and some

concerns were raised by certain Members about the adequacy of scrutiny by HPSC, and whether or not CCSSC was eligible to provide additional scrutiny on the decision.

Members of the CCSSC complained that they were not provided with adequate documentary evidence prior to the decision being made and expressed dissatisfaction that the decision to lease the site appeared to have been driven solely by commercial factors without consideration of other potentially relevant policies.

A number of Councillors raised concerns about the level of involvement of Cllr Feilding-Mellen as the elected Councillor and lead Member for Corporate Property, alleging that he had delegated too much decision-making power to unelected Officers. Former Cllr Feilding-Mellen stated in interview that he had not delegated decision-making responsibilities to Officers - they were carrying out a technical analysis of the bids and the ultimate decision would be taken by Cabinet, who could have chosen to go against the recommendation of Officers.

### **External advice**

The Council engaged external advisors on a number of occasions throughout this Transaction. The Council engaged real estate advisors HNG to take the lease to market in 2013 and obtained external legal advice to support the Corporate Property Department's view that best consideration did not comprise any non-commercial criteria.

### **Public relations and community engagement**

The Corporate Property Department developed a plan for community engagement on transactions within the Westway Strategy in 2012 through the publication of the Westway Newsletter, a pamphlet sent to approximately 10,000 households within the Westway area about the Council's Westway Strategy. No consultation was completed prior to the decision being taken – according to notes from a Cabinet and Corporate Services Committee meeting on the INC lease, the Corporate Property Department did not consider a private school to be a controversial tenant and therefore did not consider external consultation to be necessary.

Following the Corporate Property Department's recommendation that Alpha Plus provided the best offer for the INC, we understand that there was significant protest from various interest groups, particularly NHP parents and other supporters of NHP. Cllr Feilding-Mellen and the Corporate Property Department defended the decision to award the lease to Alpha Plus as its bid provided the best consideration for the Council.

Documents reviewed showed that there were allegations from public interest groups that Cllr Feilding-Mellen had a vested interest in awarding the lease to NHP or Alpha Plus, as his children were on the waiting lists at the schools. We identified no evidence to substantiate these allegations of bias in the decision-making process.

## 7.1 Rationale for the transaction and formal decision-making

### 7.1.1 Decision to release the site

The disposal of the INC was in line with RBKC's strategic objectives beginning in 2009. Its release was considered in the 2010 King Sturge review and the 2020 Corporate Property Strategy, when it was designated "*surplus to requirements*".<sup>70</sup> Further correspondence from 2011 and 2012 indicated that the Property Policy Board considered that "*freeing up*" the INC "*will create significant savings and receipts (capital or revenue) for the Council*",<sup>71</sup> and could also "*allow the release of other assets*".<sup>72</sup> The minutes, which set out RBKC's Westway Strategy, noted that there were concerns that "*proposals do not appear to hold service needs at front of thinking*" and that RBKC may no longer "*be able to provide teacher training as part of teachers' CPD*" if the INC was closed.<sup>73</sup>

The INC was used for teacher- training courses, ICT teaching space for local schools, and support services for children and family programmes. Documents showed that consideration was given to the Council employees who used the INC, and alternative locations were identified for those activities. The teacher-training spaces were re-located to the newly built Fox Primary School which housed a teacher-training and ICT hub approximately two kilometres from the INC.<sup>74</sup> Support services for family and children programmes were re-located to the Malton Road Hub, a two-minute walk away from the INC.<sup>75</sup>

However, the terms of the lease to Alpha Plus required that possession of the INC be taken in phased stages; Kroll identified from correspondence it reviewed from the spring of 2014, an instance where a Learning and Development Officer responsible for running courses at the INC had had to cancel programmes or move them to other RBKC facilities because of a lack of space at the INC, and by the

<sup>70</sup> Exhibit 33, Attachment to email, *NHP Briefing 2nd*, 25 February 2014

<sup>71</sup> Exhibit 34, RBKC Property Policy Board Meeting Minutes, 14 July 2011

<sup>72</sup> Exhibit 35, RBKC Housing and Property Budget Planning Bilateral Meeting Minutes, 5 July 2012

<sup>73</sup> Exhibit 36, RBKC Property Policy Board Meeting Minutes, 14 July 2011

<sup>74</sup> Exhibit 37, RBKC Draft Executive Decision Report Fox Primary School, 23 May 2014

<sup>75</sup> Exhibit 38, Third edition of the Westway Newsletter, March 2014

time the Corporate Property had informed him that some space in the INC was still available to them, the Officer had already cancelled some courses.<sup>76</sup>

### 7.1.2 Options considered for the release of the site: sale for development vs. leasing

In 2012 and the first half of 2013, Corporate Property considered multiple future uses of the INC site, including selling it to a third party for development into a mixed residential-commercial development, leasing the property to a private school or free school or developing the land for private housing.<sup>77</sup>

In January 2012, RBKC entered into an agreement with a developer, PEL, which was given a year to develop a proposal for a development on the INC site.<sup>78</sup>

In April 2013, PEL offered RBKC GBP 10.3 million to purchase the INC land.<sup>79</sup> The Corporate Property Department did not consider the offer attractive: communications between Cllr Feilding-Mellen and Mr. Clark showed that the Corporate Property team felt that the GBP 10.3 million figure was too low and there would be no ongoing income stream from the site after the sale.<sup>80</sup> When the agreement expired in January 2013, RBKC decided not to extend it, instead tasking the Corporate Property Department to carry out a new feasibility study.<sup>81</sup>

The Corporate Property Department was still considering various categories of desired tenant or purchaser in June 2013. In a Property Policy Board meeting, the Director of Corporate Property, Michael Clark posited that, once RBKC staff had been re-located to Kensington Town Hall or the Malton Road Hub as part of the SPACE Programme, the site would be “*free to be leased to perhaps a private school or developed into Private Rented Housing, similar to the Young Street Deal*”.<sup>82</sup> This was prior to the INC being offered to market, which was scheduled to happen in the following weeks. In a report

<sup>76</sup> Exhibit 39, Email from Learning and Development Officer, *RE: Building works at the Isaac Newton PD Centre*, 19 March 2014

<sup>77</sup> Exhibit 40, RBKC Leader's Group Progress Report on the Asset Review Programme, 22 November 2015; Exhibit 41, RBKC Asset Review Programme Ongoing Projects Westway Programme, 1 October 2015; Exhibit 42, RBKC Executive Decision Report Isaac Newton Centre Confidential Part B Appendix, 24 February 2014

<sup>78</sup> Exhibit 40, RBKC Leader's Group Progress Report on the Asset Review Programme, 22 November 2015; Exhibit 41, RBKC Asset Review Programme Ongoing Projects Westway Programme, 1 October 2015; Exhibit 42, RBKC Executive Decision Report Isaac Newton Centre Confidential Part B Appendix, 24 February 2014

<sup>79</sup> Exhibit 42, RBKC Executive Decision Report Isaac Newton Centre Confidential Part B Appendix, 24 February 2014; Exhibit 43, Email from Cllr Rock Feilding-Mellen, *Fwd: Isaac Newton Centre council meeting*, 5 March 2014;

<sup>80</sup> Exhibit 42, RBKC Executive Decision Report Isaac Newton Centre Confidential Part B Appendix, 24 February 2014; Exhibit 43, Email from Cllr Rock Feilding-Mellen, *Fwd: Isaac Newton Centre council meeting*, 5 March 2014

<sup>81</sup> Exhibit 44, RBKC Property Policy Board Westway Programme Update, 5 February 2013; Exhibit 45, RBKC Leader's Group Progress Report on the Asset Review Programme, 7 November 2013

<sup>82</sup> Exhibit 46, RBKC Property Policy Board Progress Report on the Council's Property Strategy, 27 June 2013

to the HPSC in March 2014 providing an update on the INC project, Mr. Clark added *“at the time of going to market, Corporate Property was aware that there was considerable demand in the borough from private school operators, but was not in a position to know if this high demand would result in an offer of income that was more attractive than the offer that had been received [from PEL]”*.<sup>83</sup>

In July 2013, the Corporate Property Department was informed that a free school had expressed interest in the INC site, and also that an unknown party had applied to have the site registered as an *“asset of community value”*. Both of these would have decreased the sum obtainable for the INC: the first because Corporate Property would have been forced to sell to the free school at the *“existing use value”* rather than the *“benefit of hope value”* that could be obtained from a developer; and the second by limiting the kinds of planning permission that could be granted for the site.<sup>84</sup> The advice given to Cabinet was that, if the site was subject to a third-party lease this obligation would not apply, and therefore it was preferable to lease to a third-party. The application to have the site registered as an *“asset of community value”* was not referred to in the public or exempt Cabinet reports.

### 7.1.3 Consideration of different lease options

According to the Executive Decision report for the INC presented to Cabinet in February 2014, the Corporate Property Department considered two main lease options for the site: a medium-term lease (up to 25 years) of the building in its current condition and D1 planning designation, and a long-term lease (125 years) where the existing buildings would be demolished and redeveloped into a predominantly residential, mixed-use scheme.<sup>85</sup> According to the Executive Decision Report, the Corporate Property Department received advice that advertising for both a medium- and long-term lease and then comparing the offers would *“send a confusing message to the market,”* and was *“unlikely to allow the best deal to come forward.”*<sup>86</sup>

With regard to the allegations that private school providers were being given preference, Kroll did not identify any indications that there was a particular bias towards private schools as the preferred category of tenant for the INC. In the first half of 2013, Cllr Feilding-Mellen explicitly asked Officers to give equal access to information and site visits to both educational and non-educational parties,<sup>87</sup> such

<sup>83</sup> Exhibit 47, RBKC Housing and Property Scrutiny Committee Report on Isaac Newton Centre 13 March 2014

<sup>84</sup> Exhibit 42, RBKC Executive Decision Report Isaac Newton Centre Confidential Part B Appendix, 24 February 2014; Exhibit 48, Email from Mr. Michael Clark, *Re: PDC*, 4 July 2013

<sup>85</sup> Exhibit 49, RBKC Executive Decision Report Isaac Newton Centre, 20 March 2014

<sup>86</sup> Exhibit 49, RBKC Executive Decision Report Isaac Newton Centre, 20 March 2014

<sup>87</sup> Exhibit 50, Email from Cllr Rock Feilding-Mellen, *Re: Cllr Daniel Moylan Referral*, 12 July 2013; Exhibit 252, Email from Michael Clark, *Re: Cllr Daniel Moyland Referral*, 23 July 2013

as the Sheppard Trust, which was interested in the site to develop as housing for the elderly.<sup>88</sup> However, a report to Cabinet in February 2014<sup>89</sup> and the third Westway Newsletter,<sup>90</sup> distributed to the public in March 2014, both specify that the lease was intended to deliver the site for educational use. As this was at the conclusion of the bidding process, it was clear that the best bids were from private education providers. According to the Cabinet report, Corporate Property had been inundated with interest from school providers and wished to take advantage of the strong demand in the borough to obtain the maximum possible rental value.

Alpha Plus, one of the companies interested in leasing the INC for educational purposes, was highlighted in blog posts from Grenfell Action and ‘From the Hornets’ Nest’ as being a subsidiary of Delancey Real Estate Management, a company founded by property baron James Ritblat. Sir John Ritblat, a prominent donor to the Conservative Party and James’ father, was also the Chair of Alpha Plus’ Board of Governors. Certain blogposts alluded to their being a political motivation for RBKC to ultimately award the lease of the INC to Alpha Plus. Kroll did not identify any document to substantiate this claim through a review of email correspondence and interviews.<sup>91</sup>

#### 7.1.4 The tender process, consideration of lessor and decision to award the lease to Alpha Plus

The tender process ran in three rounds from September to December 2013, with three bidders, NHP, Alpha Plus, and Educas being selected for final consideration in the submission to Cabinet. NHP offered two rent options, one of which was the highest yearly rent figure of any bidder at GBP 2.04 million per year which included an eight-month rent-free period. Alpha Plus and Educas did not include any rent-free periods in their bids. In addition, Alpha Plus offered an upward-only rent review after the first five years, while both NHP and Educas offered an upward or downward review.<sup>92</sup>

Although NHP’s offer of GBP 2.04 million per year was the highest annual rental value, when the Corporate Property Department took into account the rent-free period in the NHP bid together with the anticipated likely outcome of the five-year rent review, the Corporate Property Department determined that Alpha Plus’ bid was the most attractive, offering RBKC a minimum of GBP 20.2 million over the first ten years compared with GBP 19.6 million being offered by NHP. Based on the comparison of rent

<sup>88</sup> Exhibit 51, Email from Cllr Rock Feilding-Mellen, *Re: Shepherds Trust*, 20 June 2013

<sup>89</sup> Exhibit 253, Attachment to email, *NHP Briefing 2nd*, 25 February 2014

<sup>90</sup> Exhibit 52, RBKC Draft Westway Newsletter, 25 March 2014

<sup>91</sup> “North Ken Library – Bad Blood and Backroom Deals”, Grenfell Action, [weblink here](#). “Scrutiny Committee has chance to right a wrong tonight”, From the Hornet’s Nest, [weblink here](#). “The Ritblat Family and our Council”, [weblink here](#).

<sup>92</sup> Exhibit 53, Email from Senior Development Surveyor, *RE: Isaac Newton Centre PDC*, 18 December 2013

obtainable over ten years, Corporate Property recommended the lease be granted to Alpha Plus, and the Cabinet proceeded with this recommendation, in March 2014.

It was noted in the PPB meeting on 16 January 2014 that “*the Board agreed that a GBP 2 million value for the Isaac Newton Centre was a genuine surprise*”.<sup>93</sup> The Cabinet decision had been scheduled for 24 February 2014 but was delayed for a number of weeks due to a complaint, from NHP over the Corporate Property team’s selection of Alpha Plus as its recommended bidder. NHP raised allegations about the bidding process and the basis on which Alpha Plus was selected, as outlined previously in this Report.

### 7.1.5 NHP complaints about the tender decision

NHP made three main complaints to RBKC about the Corporate Property Department’s decision to recommend Alpha Plus for the INC lease: the failure to consider community benefits, the threat to their own survival if a competitor were to move in next door, and related traffic considerations. These are considered in the following section.

First, NHP’s bid had included a provision of “*community benefits*,” comprising the provision of several bursary places and its partnership and facilities-sharing arrangement with the Lancaster Youth Centre and the Scuola Italiana a Londra (“**SIAL**”).<sup>94</sup> In a letter sent to Cllr Feilding-Mellen on 11 December 2013, NHP valued these contributions at GBP 170,000 per year. NHP claimed they had been told these community benefits would be considered in the judgment of the bids and that the Corporate Property Department had later changed its mind.

Secondly, given that NHP’s current building was directly adjacent to the INC, NHP argued that “*the prospect of the Council renting the INC site to a direct competitor constitutes an existential threat to our longer term ability to survive*”.<sup>95</sup>

Finally, NHP asserted that as a local school founded by neighbourhood parents, it had a greater commitment to maintaining a low impact on area traffic, in contrast to Chepstow House, a newly-established school run by a “*profit-seeking corporation*,” which it believed would seek to attract pupils from across London and would therefore pay less attention to local traffic.<sup>96</sup> NHP further alleged in

<sup>93</sup> Exhibit 54, Property Policy Board Minutes, 16 January 2014

<sup>94</sup> Exhibit 55, Isaac Newton Centre Draft Heads of Terms Notting Hill Preparatory School, 3 March 2014; Exhibit 56, Notting Hill Preparatory School Letter to Cllr Rock Cllr Feilding-Mellen, 11 December 2013

<sup>95</sup> Exhibit 57, Notting Hill Preparatory School Letter to Cllrs Paget-Brown, Lightfoot and Cllr Feilding-Mellen, 3 March 2014

<sup>96</sup> Exhibit 58, Complaint from NHP on tender process, 13 February 2014



February 2014 that the Corporate Property Department had applied for a Certificate of Lawful Existing Use and Development (“CLEUD”) for the INC specifically in order to prevent the Planning Department from assessing the traffic implications of Alpha Plus moving in.<sup>97</sup> A project update document shows that the CLEUD application had been submitted as of 23 January 2014<sup>98</sup> and approved as of 11 April 2014.<sup>99</sup>

### 7.1.6 RBKC’s response to complaints about the tender process

Cllr Feilding-Mellen defended the Corporate Property Department’s approach to handling the bids in several internal emails in February and March 2014. In the first instance, he stated to RBKC’s Leader, Cllr Nicholas Paget-Brown that financial considerations had “always” been “*the primary drivers in the decision-making process,*” in line with the Strategy, and that Alpha Plus “*pledged to match the community benefits offered by any other bidder*”.<sup>100</sup>

On the issue of bursaries, he wrote that accepting a lower rent level for the sake of a small number of bursaries to a private school ran counter to the Council’s aim of generating as much revenue from the property as possible. He offered the hypothetical alternative of the Council offering its own bursaries rather than effectively sponsoring bursaries over which it had no control: “*If the Council decides that it should be spending tax-payers’ money on sending disadvantaged children to private schools, would it not be more sensible for us to maximise the rent we receive and then run the bursary programme ourselves, so we can make sure it meets our own objectives and criteria*”.<sup>101</sup>

On the issue of traffic, Cllr Feilding-Mellen stated that as NHP planned to lease its existing building to SIAL, there would be a large increase in the number of school children in the immediate area no matter which bidder was successful. He wrote in an email to Cllr Paget-Brown that “*we will require a gold standard travel management plan (like NHP) as a condition in the lease*” from Alpha Plus since NHP had included this as part of their offer.<sup>102</sup>

In an internal RBKC email discussion on 17 March 2014, Mr. Clark also suggested that NHP had understood community benefits were outside the bidding criteria, saying: “*Why go outside the process*

<sup>97</sup> Exhibit 59, Complaint from NHP on tender process, 13 February 2014

<sup>98</sup> Exhibit 60, RBKC Investment Dashboard Isaac Newton Centre, 28 January 2014

<sup>99</sup> Exhibit 61, RBKC Investment Dashboard Isaac Newton Centre, 22 April 2014

<sup>100</sup> Exhibit 62, Email from Cllr Rock Feilding-Mellen, *Fwd: NHP hearing at the Scrutiny Committee for Cabinet & Governance today, Monday 17th February 2014*, 17 February 2014

<sup>101</sup> Exhibit 63, Email from Cllr Rock Feilding-Mellen, *Draft email to group members??*, 28 February 2014

<sup>102</sup> Exhibit 62, Email from Cllr Rock Feilding-Mellen, *Fwd: NHP hearing at the Scrutiny Committee for Cabinet & Governance today, Monday 17th February 2014*, 17 February 2014



*if their agent and NHP believed we were accepting these types of benefits. Quite the opposite. NHP knew we weren't accepting them, so went out and lobbied for them to be accepted".*<sup>103</sup>

The PPB discussed NHP's likely responses to the awarding of the lease at a meeting in March 2014. One of the scenarios discussed involved the possibility of NHP issuing a judicial review against the Council in response to the decision. The minutes stated that "[the Council] must ensure that we can demonstrate that a properly considered process was adhered to. The strongest arguments around monetary considerations, as opposed to social economic considerations, should be maintained (particularly as these are the views of the majority party" in response to a potential judicial review.<sup>104</sup> Kroll is not aware of any judicial review application filed by NHP against RBKC relating to the decision.

#### 7.1.6.1 Demonstration of best consideration

RBKC was required to demonstrate that the INC bid selected represented "best consideration" under section 123 of the Local Government Act 1972. This was documented at several points: The Corporate Property Department's recommendation of Alpha Plus in January 2014, the Leader's Group endorsement of the recommendation in February, and the Cabinet's ultimate decision in March. The Corporate Property Department, the marketing agents HNG and an independent QC whose opinion was commissioned by RBKC in February 2014, all concluded that Alpha Plus' bid represented best consideration.

The Corporate Property Department's assessment in January was based on financial criteria including covenant strength, rent level at several intervals, rent-free period, and rent-review percentages and conditions.<sup>105</sup>

The independent QC's legal opinion,<sup>106</sup> submitted to RBKC on 26 February 2014, specifically stated that according to the body of case law on Section 123, best consideration was primarily demonstrated by the commercial value. The QC determined that some additional factors could be included in the calculation of best consideration, for example the retention of legal rights in the property, but was clear that these additional factors must have a quantifiable commercial value and that this did not include elements of purely social value.

<sup>103</sup> Exhibit 64, Email from Mr. Michael Clark, RE: Documents from NHP, 17 March 2014

<sup>104</sup> Exhibit 65, Property Policy Board Minutes, 6 March 2014

<sup>105</sup> Exhibit 66, Corporate Property Department Isaac Newton Centre Bid Summary, 14 January 2014

<sup>106</sup> For further detail on external legal advice, see section 7.3, involvement of external advisors.

In March 2014, three months after bids were closed, NHP submitted a further, unsolicited bid with a higher rent figure, arguing that bidding should be reopened and that failing to do so would be a breach of section 123 of the Local Government Act.<sup>107</sup> NHP also highlighted Circular 06/2003 on General Disposal Consent from the Local Government Act to bolster its case, stating that this circular gave a local authority the ability “to take a decision based on the promotion of the social, economic and environmental well-being of the community even if to do so does not necessarily achieve the best commercial value (provided the difference between competing bids is less than GBP 2m).”<sup>108</sup> NHP noted that the Council had previously relied on this circular in other recent Decisions.<sup>109</sup>

The Corporate Property Department sought internal legal advice on whether they needed to reopen bidding and were told it would contravene the agreed tender process.<sup>110</sup> In addition, the QC assessed NHP’s revised bid and found that the higher rent figure did not provide best consideration because it was “contingent upon both finance and the successful sub-letting of NHP’s existing premises,” meaning that Alpha Plus’ bid was still stronger “in terms of deliverability and strength of covenant.”<sup>111</sup> RBKC also consulted its marketing agent, Mark Belsham of HNG, who wrote that “on balance,” he did “not feel that [NHP’s] revised bid is substantially above Alpha’s”.<sup>112</sup>

#### 7.1.6.2 Analysis of other bidders’ community offers

As outlined in the previous section, RBKC maintained that Alpha Plus’ offer represented best consideration. However, faced with a significant volume of emails from constituents in December 2013 supporting NHP’s bid, with special emphasis on the community benefits, the Corporate Property Department decided informally to assess the community benefits offered by all three top bidders in order to address NHP’s concerns. In order to do this, in December 2013, RBKC asked the other two top bidders, Alpha Plus and Educas, for details on their community offerings in order to make a comparison, although an internal email stressed that this would be only “for information and will not form part of any recommendation.”<sup>113</sup> In response, both Alpha Plus and Educas emphasised they would be active members of the local community: Alpha Plus outlined the bursaries it provided and pledged

<sup>107</sup> Exhibit 67, RBKC Letter to Notting Hill Preparatory School, 10 March 2014

<sup>108</sup> Exhibit 68, Notting Hill Preparatory School Letter to Cllr Rock Cllr Feilding-Mellen, 6 March 2014

<sup>109</sup> Decisions involving 67 Golborne Road and 1 Webb Close, Dalgarno

<sup>110</sup> Exhibit 69, Email from Principal Solicitor (Property), RE: *Legal Q: s123 LGA - Isaac Newton Centre CORRECTED VERSION*, 2 March 2014

<sup>111</sup> Exhibit 70, Independent QC - Opinion with addendum, 6 March 2014

<sup>112</sup> Exhibit 71, HNG Letter to RBKC on NHP, 6 March 2014

<sup>113</sup> Exhibit 72, Email from Mr. Richard Egan, RE: *The Isaac Newton Centre-response*, 19 December 2013

to match any “community benefits” offered by other bidders, and Educas stated it would build a new auditorium which would be available for use by local groups.<sup>114</sup>

### 7.1.6.3 Lack of clarity on bid criteria in communication to bidders

HNG, the marketing agent appointed to run the tender process, communicated directly with the bidders and their agents. HNG’s main interlocutor at RBKC was a Senior Development Surveyor in the Corporate Property Department. The Surveyor’s mailbox was not available for review due to the Council’s previous data retention policy,<sup>115</sup> so our analysis has relied on email correspondence she had with colleagues and some messages forwarded to them in early March 2014, in order to reconstruct the nature of communications to the bidders during tendering from September to December 2013.

NHP alleged that HNG had misled them during the bidding process, and that they had been informed that the “community benefit” offered by a bidder would be taken into account as one of the judgment criteria.<sup>116</sup> They reported that they had been told that financial offer, covenant strength, and social benefits would be equally weighted in the assessment of bids. Emails from other NHP supporters to Councillors also referenced their belief that “the Council is considering these bids not only from a financial perspective, but also in terms of the quality of the tenants and their contribution to the wider community.”<sup>117</sup>

The Property Particulars document published by HNG does not include any detail about the categories on which the bids would be assessed. It does request that all bids include the following information: identity of the tenant, company number, audited accounts, “description of business and intended use,” lease terms, rental bid, and other technical details.<sup>118</sup> According to Richard Egan, Head of Investment and Development at the Corporate Property Department in December 2013, “no direction was given with regard to how bids would be evaluated.”<sup>119</sup> HNG’s representative asserted to RBKC in March 2014 that he had never led NHP to believe bids would be evaluated equally in three parts, noting that “community benefits is an NHP expression. None of the interested parties were asked to value community benefits.”<sup>120</sup>

<sup>114</sup> Exhibit 53, Email from Senior Development Surveyor, RE: Isaac Newton Centre PDC, 18 December 2013

<sup>115</sup> See Section 2.3, Data Retention Caveat

<sup>116</sup> Exhibit 73, Witness Statement of Mr. Patrick Ryan, Levy Real Estate LLP, 13 March 2014

<sup>117</sup> Exhibit 74, Email from Dr. G J Savage, Notting Hill Preparatory School, 9 December 2013

<sup>118</sup> Exhibit 75, Property Particulars Isaac Newton Centre, 20 February 2014; Exhibit 254, Marketing Proposal Isaac Newton Centre, 7 August 2013

<sup>119</sup> Exhibit 72, Email from Mr. Richard Egan, RE: The Isaac Newton Centre-response, 19 December 2013

<sup>120</sup> Exhibit 76, Email from Mr. Mark Belsham, RE: , 17 March 2014

No references to community benefits were found in copies of HNG’s emails to bidders saved by the Senior Development Surveyor and later shared with colleagues in response to protests by NHP.<sup>121</sup>

#### 7.1.6.4 Internal confusion on bid criteria

Correspondence shows that while HNG was presenting analysis of the bids primarily based on financial criteria, it was not understood across the board at RBKC that community benefits would not be considered during the period when the bids were being judged.

HNG prepared comparison charts of the bids for the second,<sup>122</sup> third,<sup>123</sup> and fourth<sup>124</sup> rounds of bids. These tables measured the bidders against multiple criteria, mainly financial in the early rounds, but including both financial and softer criteria for the fourth round of bids, which comprised the top three bidders, such as “community,” “motto,” and “style.” For instance, NHP’s “style” was “founded by local parents to service the needs of local residents for primary school education,” and Alpha Plus’ “style” was “London and South East schools’ group. Co-educational, Non-denominational, independent school pre-prep and prep school from reception class to year 8 (13 yrs old).”<sup>125</sup>

Multiple emails from Cllr Feilding-Mellen to colleagues in December 2013 suggested that he understood that community benefits could be considered. On 16 December 2013, he wrote that bidders should be told “the key considerations (rent, community benefits, covenant, etc?) that we will assess when making a decision.”<sup>126</sup> On 16 December 2013, he wrote to Councillor Emma Will that “In the end we’ll [the Cabinet] have to weigh up the headline rent, the covenant, and any other relevant issues (extra traffic, community benefits, etc). It is all pretty close right now I think.”<sup>127</sup> On 17 December 2013, he wrote to all RBKC Councillors saying, “Cabinet will still consider all elements in the round, including the possible community benefit from each bid. However, the financial implications of each bid (rental offer and covenant strength) will be very important as has always been the case – remember that Cabinet’s priority was to secure the highest income stream from this property, NOT to get a new private school there.”<sup>128</sup>

As late as 20 February 2014, Cllr Feilding-Mellen questioned how the criteria for judgment had been communicated to bidders: “Is it a bit worrying that the marketing particulars state in bold that we might

<sup>121</sup> Exhibit 77, Email from Mr. Mark Belsham, Isaac Newton Centre, 5 December 2013

<sup>122</sup> Exhibit 78, Isaac Newton Centre Comparison of Second Round Bids, 22 November 2013

<sup>123</sup> Exhibit 79, Isaac Newton Centre Rent Ranking of Second Round Bids, 26 November 2013

<sup>124</sup> Exhibit 80, Isaac Newton Centre Comparison of Fourth Round Bids, 19 December 2013

<sup>125</sup> Exhibit 80, Isaac Newton Centre Comparison of Fourth Round Bids, 19 December 2013

<sup>126</sup> Exhibit 81, Email from Cllr Rock Feilding-Mellen, FW: The Isaac Newton Centre, 16 December 2013

<sup>127</sup> Exhibit 82, Email from Cllr Rock Feilding-Mellen, Re: The Isaac Newton Centre, 17 December 2013

<sup>128</sup> Exhibit 83, Email from Cllr Rock Feilding-Mellen, Re: Bid for the Isaac Newton Centre, 17 December 2013

*NOT accept the highest bid??*<sup>129</sup> This was picked up by NHP's head Jane Cameron in an email to Cllr Feilding-Mellen on 28 February 2014: *"One of the few written conditions was that 'the Council reserves the right not to award the bid to the highest bidder'. This was subsequently directly contradicted both on paper and at recent public meetings, at which Councillors stated that highest financial value was the sole criteria in their recommendation and always had been.*"<sup>130</sup>

The Corporate Property Department discussed this lack of clarity internally at the Property Policy Board on 13 March 2014, with Cllr Feilding-Mellen asking if future lettings criteria could include a statement on RBKC's property strategy, and Mr. Clark agreeing *"to give best consideration for our marketing tactics.*"<sup>131</sup>

#### 7.1.6.5 Applicability of RBKC strategies and codes

Internal correspondence shows that the Corporate Property Department received complaints both from bidders and other Councillors about its treatment of the INC disposal as a commercial transaction, and about alleged disregard shown for the Council's other objectives and responsibilities, as outlined in several strategies and codes.

In February 2014, the Cabinet and Corporate Services Scrutiny Committee Chair, Labour Councillor Emma Dent Coad, considered that there was a *"disconnect"* between the Core Strategy 2010 and the way the Property Department had operated in the leasing of the INC.<sup>132</sup>

Cllr Dent Coad emailed Nicholas Holgate, RBKC's Town Clerk, in late March 2014, stating that the disposal of the INC on purely commercial terms violated the 2020 Corporate Property Strategy. She provided an excerpt from a summary of the Strategy, which stated that commercial leases should be *"subject to the current local development framework and other community considerations."* A member of the Corporate Property Department responded to Cllr Dent Coad's claims, stating that because the INC was retaining its D1 educational use and the Corporate Property Department had applied for a CLEUD, the lease was technically not subject to the local development framework. The response additionally stated that *"if a change of use were sought, then this would equate to 'development' in planning terms and would require planning permission, which would also need to accord with the relevant planning policies"*.<sup>133</sup> A statement was also provided by the Executive Director of Planning and

<sup>129</sup> Exhibit 84, Email from Cllr Rock Feilding-Mellen, *Re: Draft note on NHP*, 20 February 2014

<sup>130</sup> Exhibit 85, Email from Ms. Jane Cameron, *5th March RBKC Debate over bid for INC W11*, 28 February 2014

<sup>131</sup> Exhibit 86, Reference from the Cabinet and Corporate Scrutiny Committee to Cabinet, 17 March 2014

<sup>132</sup> Exhibit 87, RBKC Report of the Cabinet and Corporate Services Scrutiny Committee, 24 February 2014

<sup>133</sup> Exhibit 88, Email from Mr. Michael Clark, *RE: Response to Cllr Dent Coad: Property Board/Property Stakeholder Board/Corporate Property Strategy*, 4 April 2014

Borough Development, reiterating the same, stating *“The Core Strategy is part of the statutory development plan for the borough. The development plan contains policies which set out the Council’s approach to the development of land. It only bites where development is involved. But the use as a school is not development. There is no policy in the Core Strategy that can be applied to favour one D1 activity over another, because no planning control is exercisable”*.<sup>134</sup>

### 7.1.7 Communications with bidders

Before and during the bidding process, Officers from the Corporate Property Department were also undertaking separate negotiations with NHP over the development of the INC car park, part of which had been leased to NHP for use as a playground since 2008.<sup>135</sup> This gave rise to allegations from Alpha Plus that RBKC was closer to NHP than to the other bidders and that this gave them an unfair advantage. This perception persisted despite the fact that NHP’s bid for the INC lease was not successful. Communications reviewed by Kroll showed the Corporate Property Department was aware of the perception that discussions with NHP could appear unfair and therefore attempted to minimise engagement with NHP during the bidding process.

Before the start of the tender process, NHP had general meetings with RBKC, one of which included a discussion of NHP’s *“priorities and wish list of ideas”* for the use of the INC at a Property Digest Meeting in November 2012.<sup>136</sup> Communications with NHP show that Corporate Property overtly kept these discussions separate from the bidding process for the INC building itself, refusing two requests from NHP in December 2013 for a meeting to discuss the bid.<sup>137</sup> The team also redirected communications from SIAL, the Italian immersion school which intended to sublet NHP’s existing building, to the marketing agent rather than dealing with them directly, with the explanation that they were *“trying to run a fair tender process for all parties.”*<sup>138</sup>

On 7 January 2014, Graham Able, CEO of Alpha Plus, wrote to Cllr Feilding-Mellen suggesting *“there may have been further more specific dialogue”* with NHP on portions of their bid, to which Cllr Feilding-Mellen replied stating, *“I have had no ‘more specific dialogue’ with any of the bidders”*.<sup>139</sup>

<sup>134</sup> Exhibit 89, Statement from the Executive Director of Planning and Borough Development, March 2014.

<sup>135</sup> Exhibit 90, Draft Delegated Authority Decision Part Car Park Isaac Newton Centre, 9 August 2011

<sup>136</sup> Exhibit 91, Property Digest Meeting Minutes 22 November 2012

<sup>137</sup> Exhibit 92, Attachments to Mr. Patrick Ryan’s Witness Statement 17 March 2014

<sup>138</sup> Exhibit 93, Email from Mr. Michael Clark, *RE: Isaac Newton Centre - Bid*, 22 November 2013; Exhibit 94, Email from Cllr Nicholas Paget-Brown, *RE: Bid for the Isaac Newton Centre*, 18 December 2013

<sup>139</sup> Exhibit 95, Email from Mr. Graham Able, *Private & confidential re Lancaster Road*, 7 January 2014; Exhibit 96, Email from Cllr Rock Cllr Feilding-Mellen, *Re: Private & confidential re Lancaster Road*, 8 January 2014

Only after the Corporate Property Department issued its recommendation of Alpha Plus as the preferred bidder to Cabinet, Cllr Feilding-Mellen began engaging in direct correspondence with the bidders, including both Jane Cameron, headmistress of NHP, and Richard Jones of Alpha Plus.<sup>140</sup> In particular, Cllr Feilding-Mellen arranged to meet with several NHP representatives in the weeks following Corporate Property's recommendation Alpha Plus to "discuss [their] needs for the future".<sup>141</sup> Further discussions with NHP focused on the school's interest in the North Kensington Library, as described further in Section 8.1.2.

<sup>140</sup> Exhibit 97, Email from Mr. Graham Able, *Lancaster Road*, 21 January 2014

<sup>141</sup> Exhibit 98, Email from Ms. Jane Cameron, *Re: Isaac Newton Centre*, 31 January 2014; Exhibit 99, Email from Cllr Rock Cllr Feilding-Mellen, *Re: The Isaac Newton Centre*, 15 January 2014; Exhibit 100, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014; Exhibit 101, Email from Mr. Michael Clark, *RE: Isaac Newton Centre bids*, 7 February 2014



## 7.2 Internal consultation and scrutiny

Kroll identified evidence of internal consultation with other RBKC departments, including education and legal, during tendering, and in the first few months of 2014 as the Council prepared to award the lease to Alpha Plus. The decision was also considered by two scrutiny committees.

### 7.2.1 Consultation with internal stakeholders

This section sets out specific concerns raised by internal Council stakeholders, as well as other consultation with the Education and Legal Departments regarding the progression of the transaction. The Planning Department was not consulted as Corporate Property had applied for a CLEUD<sup>142</sup> and therefore no planning permission was necessary to lease the site to a school.

The public decision report noted that it was considered that no equality implications were to arise from the leasing of the INC.

#### 7.2.1.1 Education Department

The Senior Development Surveyor wrote to two Education Department colleagues on 26 November 2013 asking for their “*feedback*” on the top seven bidders, while stressing that it would “*not form part of the scoring criteria used to assess the bids*”.<sup>143</sup> However, when Cllr Emma Will from the Family and Children’s Services Scrutiny Committee asked to be informed of bidders’ details the same month,<sup>144</sup> Mr. Clark indicated that the team needed to “*wait until full and final offers come in and then we can discuss the proposals with Education colleagues and seek input from Cllr Will*”.<sup>145</sup>

When the Corporate Property Department did meet with Councillor Will in December 2013 to discuss the top three bids, she raised no objections, according to Property Policy Board meeting minutes.<sup>146</sup> Emails to bidders from mid-December soliciting final offers indicate that the Education Department had concluded that the educational provisions of the top three bidders were very similar.<sup>147</sup>

<sup>142</sup> Certificate of Lawful Existing Use or Development – a legal document granted by a local planning authority to retroactively approve development activity, which certifies that the use of the building is lawful and prevents enforcement action being taken.

<sup>143</sup> Exhibit 102, Email from Mr. Ian Heggs, *FW: Isaac Newton Centre bidders*, 27 November 2013

<sup>144</sup> Exhibit 103, Email from Cllr Emma Will, *Re: Isaac Newton Centre - bid*, 22 November 2013

<sup>145</sup> Exhibit 104, Email from Mr. Michael Clark, *RE: Isaac Newton Centre - bid*, 22 November 2013

<sup>146</sup> Exhibit 105, RBKC Property Policy Board Meeting Minutes 5 December 2013

<sup>147</sup> Exhibit 106, Copy of email from Mr. Mark Belsham, *Isaac Newton Centre*, 13 December 2013



### 7.2.1.2 Legal Department

The Corporate Property Department sought internal legal advice at several junctures, including when NHP offered an increased, unsolicited bid in March 2014,<sup>148</sup> and in response to NHP’s view that RBKC was wrong to not consider community benefits.

In the first case, Tasnim Shawkat, Director of Law, recommended that Cllr Feilding-Mellen defer judgment to Mr. Clark as the Director for Corporate Property and Customer Services, as he would be the most familiar with how the offer was presented and “*would be able to advise you on the options based on the particular facts of this case*”.<sup>149</sup> In the second case, a solicitor for RBKC advised that the Council could have opted to make its decision “*based on social or economic well-being*” but that as it had sought bids on a commercial basis, there was a risk of legal action by the other bidders if the criteria for assessment were changed after the fact. He advised Cabinet “*not to take this [NHP’s community benefit offer] into account*.”<sup>150</sup>

RBKC subsequently retained outside counsel to give an opinion on these issues as NHP remained unsatisfied (see Section 7.3, involvement of external advisors).

## 7.2.2 Scrutiny committees

Kroll’s review of internal communications has identified that the decision to lease the INC was subject to scrutiny from both the HPSC and CCSSC. The decision was “*called-in*” after concerns were raised by the CCSSC. Following further consideration by Cabinet the Cabinet upheld its original decision to award the lease to Alpha Plus.

### 7.2.2.1 Diamond rating

The decision to award the lease to Alpha Plus was allocated a ‘one diamond’ rating.<sup>151</sup> Given the high level of interest from certain groups supporting NHP and the strength of NHP’s allegations about the bidding process, in retrospect the appropriateness of the allocation of a one-diamond rating was questionable. However, despite the rating, the decision was discussed at Scrutiny Committee meetings for the HPSC and CCSSC, as set out below. This indicates that, whilst it could be argued that the

<sup>148</sup> Exhibit 107, Email from Cllr Rock Cllr Feilding-Mellen, *Isaac Newton Centre bids*, 5 February 2014

<sup>149</sup> Exhibit 108, Email from Ms. Tasnim Shawkat, *RE: Isaac Newton Centre bids*, 6 February 2014

<sup>150</sup> Exhibit 69, Email from Principal Solicitor (Property), *RE: Legal Q: s123 LGA - Isaac Newton Centre CORRECTED VERSION*, 2 March 2014

<sup>151</sup> Exhibit 109, Email from Cabinet Co-Ordinator, *RBKC Key Decisions 02/12/2013*, 12 February 2013; Exhibit 110, RBKC Key Decision Report for the Isaac Newton Centre 2014, [weblink here](#)

diamond allocation did not consider certain members of the public who felt that the decision had a significant impact, this did not affect the level of scrutiny the decision received.

### 7.2.2.2 Housing and Property Scrutiny Committee

The HPSC's responsibilities included scrutinising "*corporate asset management*."<sup>152</sup> The record identified for its review of the INC lease indicates the decision was placed on the agenda for the meeting on 13 March 2014,<sup>153</sup> when the Cabinet had originally planned to confirm the decision on 24 February 2014. No details of the HPSC's discussion on the INC were present in the meeting minutes. The section on the INC stated, "*the report was noted*".<sup>154</sup> The Chair of this committee commented in interview that this did not mean that no scrutiny had taken place around the decision, but reflected that no members of the committee felt that there were unanswered questions following the review of the report. This included no further challenge or clarification from opposition Councillors on the committee.

### 7.2.2.3 Cabinet and Corporate Services Scrutiny Committee

The Cabinet and Corporate Services Scrutiny Committee discussed the INC at two of its meetings: it was on the agenda for one meeting held before the decision was taken by Cabinet, and the CCSSC "*called-in*" Cabinet's decision with a cross-party majority for further scrutiny after the fact. Kroll understands from interviews that call-ins of decisions at that time were exceedingly rare at RBKC from Scrutiny Committees. Additionally, one Member of the CCSSC, expressed concern in a February email that CCSSC Members were not getting access to documentary evidence in time to review it properly ahead of the Cabinet decision.<sup>155</sup>

Cllr Quentin Marshall, Chair of the HPSC, queried whether CCSSC was the appropriate Scrutiny Committee on the basis that the INC transaction was "*very obviously a property matter so under HPSC*." In an email to Cllr Feilding-Mellen, he suggested that CCSSC Members may have been using their position to "*build political momentum in their favour*."<sup>156</sup> Based on RBKC's Constitution, it appears CCSSC was within its mandate to scrutinize the INC lease, as its remit included "*the achievement of effective, transparent and accountable decision-making by the Council,*" "*consultation with the public,*"

<sup>152</sup> Exhibit 27, RBKC Constitution (June 2012), Part 2, Article 6

<sup>153</sup> Exhibit 111, Email from Governance Administrator, *HPSC - Final list of agenda items for 13 March Meeting - for information & action*, 15 January 2014

<sup>154</sup> Exhibit 112, RBKC Housing and Property Scrutiny Committee Meeting Minutes 13 March 2014

<sup>155</sup> Exhibit 113, Email from Cllr Julie Mills, *Re: Confidential - Isaac Newton Centre - Response to Jane Cameron's email*, 28 February 2014

<sup>156</sup> Exhibit 114, Email from Cllr Quentin Marshall, *Re: Confidential - Isaac Newton Centre - Response*, 1 March 2014

and “regeneration and economic development.” The Scrutiny Steering Group was ultimately responsible for mediating any disputes between committees on their respective boundaries.<sup>157</sup>

In its first discussion of the INC on 17 February 2014, Members of the CCSSC were concerned that the communication around the tender process had been too focused on the commercial aspect: “Members commented that the Council cannot be a purely commercial operator. It has a community responsibility. There was now a more commercial approach to the disposal of its surplus assets and this needed to be handled more sensitively”.<sup>158</sup>

On 7 March 2014, the CCSSC unanimously “called in” the Cabinet’s decision on the INC lease for further discussion. It met on 17 March 2014, and as a result of its discussions, agreed to “recommend the Cabinet to reconsider the decision”, on several grounds, including: legal and procedural questions regarding “best consideration;” the relevance of Council policies including the Core Strategy and Community Strategy; and “confusion of terms/appearance of fairness and transparency”.<sup>159</sup> The Cabinet met to go over the CCSSC’s recommendations and ultimately upheld its decision to lease the INC to Alpha Plus.

Following Cabinet’s decision to proceed, Cllr Dent Coad, the Chair of the CCSSC, requested a number of documents in late March 2016 from the Town Clerk, Mr. Holgate, to “help her understand the decision-making process relating to the disposal of Council-owned property”, which included minutes and agendas from the PPB. According to email communication, Kroll understands that Mr Holgate did not provide these to Cllr Dent Coad, stating that since the PPB was not a decision-making body that “access to information requirements” did not apply to the meetings. Mr. Holgate offered to explain this to Cllr Dent Coad and the uses for which the information would be used under the “Protocol on Members’ Rights of Access to Information” from RBKC’s Constitution.<sup>160</sup>

#### 7.2.2.4 Issues raised over Member involvement in decision making

A number of councillors wrote to Cllr Feilding-Mellen and other colleagues in November and December 2013 raising concerns that his approach was too ‘hands-off’ and that Officers were taking decisions which should have been the responsibility of Councillors. In November, one member of the CCSSC wrote to Cllr Feilding Mellen asking , “Who’s running The Council!!!! Last I heard it was Elected

<sup>157</sup> Exhibit 28, RBKC Constitution (June 2013), Part 2, Article 6.02

<sup>158</sup> Exhibit 87, RBKC Report of the Cabinet and Corporate Services Scrutiny Committee, 24 February 2014

<sup>159</sup> Exhibit 86, RBKC Reference from the Cabinet and Corporate Service Scrutiny Committee, 20 March 2014

<sup>160</sup> Exhibit 115, email correspondence provided by Cllr Dent Coad.

*Members. Or are we getting told now by Executive Directors and their staff what we must advise, do and think*".<sup>161</sup> In December, another councillor expressed similar concerns that as Cllr Feilding-Mellen was on holiday *"the bidding will now be handled solely by the property department"*.<sup>162</sup> Cllr Feilding-Mellen stated in interview that Officers were not making decisions but were performing technical analysis on the bids and that decisions made on the INC would ultimately be taken by Cabinet, based on the recommendations provided by Officers.

On several occasions in internal communications, Cllr Feilding-Mellen was clear that he believed it was correct for the Officers, as property experts, to run the process.<sup>163</sup> It appears the majority of the responsibility for managing the tender process was delegated to the Senior Development Surveyor. Mr. Clark wrote to her in March 2014 congratulating her for her work, saying, *"Really well done. I didn't really provide you with much guidance or steer (for a change) on how to market and run the bidding process and both yourself and the agent you employed were put under a fine microscope and came out with flying colours in all areas"*.<sup>164</sup>

<sup>161</sup> Exhibit 116, Email from Cllr Julie Mills, *Fw: Isaac Newton Centre - Bid*, 22 November 2013

<sup>162</sup> Exhibit 255, Email from Cllr Catherine Faulks, *Bid for the Isaac Newton Centre*, 17 December 2013

<sup>163</sup> Exhibit 83, Email from Cllr Rock Cllr Feilding-Mellen, *Re: Bid for the Isaac Newton Centre*, 17 December 2013

<sup>164</sup> Exhibit 256, Email from Ms. LeVerne Parker, *FW: INC letting*, 21 March 2014

### 7.3 Involvement of external advisors

RBKC commissioned external property advice from several outside experts in the years leading up to the INC lease and to manage the tender process itself, and also obtained independent legal advice in response to objections raised by NHP.

The external property experts engaged include King Sturge in 2010;<sup>165</sup> Lambert Smith Hampton in 2012, in relation to the wider “*asset rationalisation programme*”;<sup>166</sup> the developer PEL through an exclusivity agreement in 2013;<sup>167</sup> and HNG Chartered Surveyors as marketing agents also in 2013.<sup>168</sup>

As documented above in Section 7.1.6.1(demonstration of best consideration), RBKC obtained legal advice from an independent QC, in response to complaints from NHP about alleged irregularities in the bidding process. The QC reviewed the marketing process and the recommendations made to Cabinet and concluded that although no independent valuation of the property had been obtained, the marketing process was appropriate and proper, and in accordance with the Local Government Act section 123.

<sup>165</sup> Exhibit 257, RBKC Leader's Group Progress Report on the Asset Review Programme, 7 November 2013

<sup>166</sup> Exhibit 117, RBKC Cabinet Report Appointment of a Supplier to Deliver Strategic Property Consultancy Services 22 March 2012

<sup>167</sup> Exhibit 44, RBKC Property Policy Board Westway Programme Update, 5 February 2013; Exhibit 257, RBKC Leader's Group Progress Report on the Asset Review Programme, 7 November 2013

<sup>168</sup> Exhibit 118, Corporate Property Executive Decisions as at 26 July 2013

## 7.4 Public relations and community engagement

Review of internal communication revealed differing views within the Corporate Property Department regarding the necessary level of consultation and public involvement in decision making in relation to the INC. External stakeholders including the bidders and members of the public raised concerns that RBKC's communications with them were misleading.

### 7.4.1 Community Engagement

In April 2012, Michael Clark instructed four Officers in the Corporate Property Department to start developing a “*comms/stakeholder engagement plan*” for the INC and other properties forming part of the Westway Strategy, together with the communications team.<sup>169</sup> Whilst Kroll has not been able to identify a specific document highlighting a plan, we understand that this included the distribution of the Westway Newsletter published in November 2012,<sup>170</sup> July 2013,<sup>171</sup> and March 2014, which contained overviews of the various options considered for the INC amongst other items. The March 2014 issue contained an announcement that a private school had been selected as a lessee.<sup>172</sup>

A November 2013 report to the Leader's Group on the Corporate Property Strategy 2020 stated that “*Corporate Property have continued to ensure all necessary stakeholders, including business groups are engaged and consulted as the above projects have developed, this process will continue*”.<sup>173</sup>

No external public consultation was carried out by the Council in relation to the INC. This could be explained by a draft response prepared by the Corporate Property Department to questions from the Cabinet and Corporate Services Scrutiny committee which set out that: “*The proposed use as a private school was felt not to be a controversial tenant, unlike a supermarket or chain retailer and so was not consulted [sic] on with ward members or residents*”.<sup>174</sup> A summary of the INC Key Decision points circulated internally at RBKC on 29 March 2014 contained a section for external consultation, which stated, “*Consultation details: no external consultation*”.<sup>175</sup>

<sup>169</sup> Exhibit 119, Email from Mr. Michael Clark, RE: PDC, 11 April 2012.

<sup>170</sup> Exhibit 120, The Westway Newsletter Issue 1, 16 November 2012

<sup>171</sup> Exhibit 121, The Westway Newsletter Issue 2, 12 August 2013

<sup>172</sup> Exhibit 52, RBKC Draft Westway Newsletter, 25 March 2014

<sup>173</sup> Exhibit 122, Report by the Director of Corporate Property and Customer Services to the Leader's Group, 7 November 2013

<sup>174</sup> Exhibit 123, RBKC Cabinet Report Reference from the Cabinet and Corporate Service Scrutiny Committee, 20 March 2014

<sup>175</sup> Exhibit 124, Email from Cabinet Co-Ordinator, RBKC Key Decisions for the week ending 29 March 2014, 29 March 2014

### 7.4.2 RBKC response to NHP supporters' mass email campaigns

A significant number of advocates for NHP wrote to RBKC in December 2013 and February 2014 to complain about unfairness in the tender process. The first of these email campaigns was triggered by an email from HNG to NHP clarifying that “*community benefits*” were not part of the bidding criteria, and the second was triggered by Cllr Feilding-Mellen’s email to the Head of NHP informing her that Corporate Property was recommending Alpha Plus for the lease. One email from a likely parent of NHP stated that RBKC had “*set aside the needs of the broader community in favour of a small, profit seeking, minority*”<sup>176</sup> Based on internal documents and communications reviewed, Cllr Feilding-Mellen coordinated a measured, consistent response to the campaigns.

On 8, 9, and 10 December 2013, a large number of NHP parents and other supporters emailed Cllr Feilding-Mellen and other Councillors advocating for the school. One of these advocates was the Italian ambassador to the United Kingdom, who wrote in support of the Scuola Italiana a Londra, which intended to sublet NHP’s existing school building across the street from the INC.<sup>177</sup> Councillors responded noncommittally; in one email Cllr Feilding-Mellen stated “*in the end the decision will be taken by the whole Cabinet, not just me, and we will have to go with the bid that delivers best value to the Council (i.e. local Council tax payers).*”<sup>178</sup>

In a similar campaign to the one conducted in early December 2013, a large number of NHP supporters sent emails to RBKC Councillors on 17 February 2014 and several days following.<sup>179</sup> One of these described the lease as a “*crackpot scheme...that was conceived just to make as much money as possible. That surely cannot be the primary purpose of any responsible Council body.*”<sup>180</sup> On 4 March 2014, Cllr Feilding-Mellen wrote to the NHP supporters who had lobbied him in support of the school to explain Corporate Property’s rationale for recommending Alpha Plus, noting that the team had “*reviewed the marketing and evaluation processes in great detail and made sure to double-check all the issues raised by NHP.*”<sup>181</sup> RBKC’s response to NHP supporters’ concerns is laid out in Section 7.1.6 (RBKC’s response to NHP’s complaints).

<sup>176</sup> Exhibit 125, Email from Mr. Mike Humphries, *FW: Rock Feilding-Mellen response on Lease of the Isaac Newton Centre*, 5 March 2014

<sup>177</sup> Exhibit 126, Italian Ambassador letter to Nicholas Paget-Brown, 10 December 2013

<sup>178</sup> Exhibit 127, Email from Cllr Rock Feilding-Mellen, *Re: The Isaac Newton Centre*, 4 December 2013; Exhibit 128, Email from Cllr Rock Cllr Feilding-Mellen, *Re: Isaac Newton Centre*, 8 December 2013

<sup>179</sup> Exhibit 129, Email from Ms. Cosima Spender, *Isaac Newton Centre bid*, 17 February 2014; Exhibit 130, Email from Ms. Henrietta Conrad, *The Isaac Newton Centre in Lancaster Road*, 17 February 2014

<sup>180</sup> Exhibit 131, Email from Ms. Laura Sanderson, *FW: Proposed plans for the Isaac Newton Centre.*, 20 February 2014

<sup>181</sup> Exhibit 132, Email from Cllr Rock Feilding-Mellen, *Fwd: Lease of Isaac Newton Centre*, 14 March 2014

### 7.4.3 Alleged conflict of interest: Councillors' children attending bidding schools

Grenfell Action Group alleged that Cllr Feilding-Mellen had a conflict of interest in his involvement in the INC lease as his children were on the waiting list for both NHP and Alpha Plus. At the Cabinet meeting on 20 March 2014, when the final decision was made on the INC lease, Cllr Feilding-Mellen disclosed that *“his twins were on the waiting list for Notting Hill Prep and on the waiting list for a nursery owned by Alpha Plus.”*<sup>182</sup> We have not identified any evidence of undue influence based on these affiliations in internal email correspondence. As set out in section 7.1.3, other potential lessors were considered in the early stages and the rationale for the decision to lease to private schools was in order to achieve the best consideration.

## 7.5 Conclusions

In overview, the documents and communications reviewed by Kroll identified a number of examples whereby Officers and Members adhered to the requirements and standards as set out by the Constitution, including the seeking of advice, escalating decisions appropriately and demonstrating best consideration for the lease of INC. Alternative options were appraised by the Corporate Property Department and external consultation was considered.

### 7.5.1 Alignment with strategy

The decisions surrounding the INC lease were in line with the Corporate Property Strategy 2020, which sought to *“reduce operational property running costs”* by reducing floor space and releasing unneeded or badly-performing sites *“to produce commercial income”*.<sup>183</sup>

Labour Councillor Emma Dent Coad objected to Corporate Property's management of the INC lease on the grounds that the release of properties under the Corporate Property Strategy 2020 needed to be in alignment with the Local Development Framework and *“other community considerations”*.

Communications between the Planning Department and the Corporate Property Department concluded that as the use of the building was not being changed (i.e. it was to retain its D1 classification), it did not constitute a development to which the Local Development Framework would be applicable.

<sup>182</sup> Exhibit 133, RBKC Cabinet Meeting Minutes 20 March 2014, [weblink here](#)

<sup>183</sup> Exhibit 134, RBKC 2020 Corporate Property Strategy, [weblink here](#)



Although NHP's bid specifically referred to community benefit, Corporate Property did not take this into account in the determination of best consideration and obtained independent legal advice supporting that decision. Alpha Plus also committed to match the community benefits proposed by NHP. Cllr Feilding-Mellen articulated to his colleagues on several occasions that the Corporate Property Department's remit was to obtain the highest obtainable rent, specifically in order to fund RBKC programmes which would benefit the community.

## 7.5.2 Decision making and scrutiny

Based on the documents reviewed, Officers and Members conformed to RBKC's constitutional framework in the decision making process around leasing of the INC. Internal and external advice was sought at multiple stages in the process; decisions were escalated to two scrutiny committees; and Officers and Members were able to demonstrate that they achieved best consideration for the lease on the site. Kroll identified that RBKC considered several options internally, including a sale for redevelopment and several lengths of lease to different potential categories of tenants. The Corporate Property Department undertook a multi-round tendering process, managed through an external agent.

Despite this, Kroll found that during the decision-making process, it did not always appear to be clear, to the bidders and in some instances in internal communications, whether or not non-financial benefits to the community were to form part of the decision-making process, and it was only after the decision had been made that Officers and Members conclusively argued that they had obtained best consideration for the site, with support from external legal advice, in the face of considerable opposition from one of the unsuccessful bidders.

With regards to communication with stakeholders and public engagement, the Westway Newsletters published in November 2012 and July 2013 provided updates on RBKC's plans for the INC. The decision was placed on the publicly available Forward Plan and was discussed at a Cabinet meeting, which was open to the public. The Corporate Property Department did not conduct any external consultation on the decision as: (i) they did not consider NHP to be a controversial tenant; and (ii) as the building was underutilized and provided back office services for the Council rather than community services.

With regards to the level of involvement of the responsible Cabinet Member in decision making, Kroll identified differing views between Members about the appropriate level of involvement. Certain Members alleged that Cllr Feilding-Mellen devolved too much responsibility for the INC lease decision to the Corporate Property Officers, but he countered that the Officers, as professionals in their field, were performing analysis of the bids, and that their work would inform their recommendation to Cabinet.

Cllr Feilding-Mellen emphasised this point in interview, confirming that it was the job of the Officers to analyse the various options surrounding the transactions and present these to Cabinet for debate and approval. This is in line with Kroll's understanding of the constitutional requirements of Officers.

The review also identified internal disagreement on which scrutiny committee was eligible to concern itself with the INC lease, with concerns expressed that CCSSC Members were involving themselves in matters beyond their purview with a political motivation. The CCSSC recommendation not to grant the lease to Alpha Plus was ultimately disregarded by Cabinet in favour of the recommendation from Corporate Property.

Review of meeting minutes for the HPSC did not identify any detailed consideration of the Transaction prior to the adoption by Cabinet. This was in contrast to the CCSSC meeting, during which Members raised a number of other points for consideration, including whether community benefits should have been considered and risks of delaying the decision, including potential judicial review and loss of income for RBKC.<sup>184</sup>

Documents reviewed by Kroll showed that RBKC identified suitable replacement accommodation for the services provided from the INC. Kroll identified just one instance where a Learning and Development Officer of the Council cancelled classes due to the perception of a lack of space at the facilities.

### 7.5.3 Response to specific allegations

Kroll's review identified the following specific allegations relating to the lease of the INC. Each allegation is considered in the context of the detailed analysis set out in the preceding sections.

#### **Allegation 1 – Community benefit**

NHP raised objections in early 2014 that the Council had not properly considered the value of NHP's community engagement considerations in reaching their decision to lease the INC to Alpha Plus. A group of parents and other local residents also wrote to the Council following the decision to lease the site to Alpha Plus, expressing their dissatisfaction with the decision on the basis of potential increased traffic impact and their allegiance to NHP as an existing local school.

<sup>184</sup> Exhibit 135, RBKC Cabinet Part B Minutes, 6 March 2014

**Kroll analysis:**

RBKC's advertisement of the lease did not include detail on the criteria it would use for assessing the bids, and internal emails showed some different views as to what the bidding criteria would be during the bidding process. Documents reviewed by Kroll support the conclusion that the decision was ultimately made on financial criteria, i.e. obtaining the best consideration for the Council. Kroll also identified evidence of consideration of community benefits, deemed to be broadly equivalent, and not included as part of the rationale for Cabinet's final decision. This approach was confirmed as properly achieving best consideration by independent legal advice.

**Allegation 2 – Conflict of interest**

The Grenfell Action Group ("**Grenfell Action**") raised concerns of a potential conflict of interest involving Cllr Feilding-Mellen. Specifically, Grenfell Action raised concerns that Cllr Feilding-Mellen recommended that "*public community resources*" should be leased to private schools "*in which he had personal interests.*"<sup>185</sup> This refers to the allegation that Cllr Feilding-Mellen's children were on the waiting list of the schools which would benefit from this (and the NKL) transaction.

**Kroll analysis**

At the Cabinet meeting on 20 March 2014, Cllr Feilding-Mellen made a formal disclosure that his children were on the waiting list for a nursery school owned by Alpha Plus and for NHP. From the analysis conducted, Kroll did not identify any evidence that Cllr Feilding-Mellen was exerting any undue influence for any personal benefit. Earlier in the process, a number of non-educational providers were considered as potential lessees. Both Alpha Plus and NHP were given consideration in the INC transaction as well as the other transactions set out in the following sections.

**Allegation 3 – Conflict of interest**

Grenfell Action alleged that decision making around the awarding of the lease to Chepstow House (and its owners Alpha Plus) was influenced by political motivations, particularly that the owner of Alpha Plus, Jamie Ritblat and his father John Ritblat were major Conservative Party donors during the relevant period, and this gave them an unfair advantage in the decision of granting the lease.<sup>186</sup>

<sup>185</sup> Exhibit 136, "Cllr Feilding-Mellen Bang To Rights? – Not Just Yet!" Grenfell Action Group, 29 June 2016, [weblink here](#)

<sup>186</sup> Exhibit 137, "North Ken Library – Bad Blood And Backroom Deals," Grenfell Action Group, 4 May 2016, [weblink here](#)

**Kroll analysis**

Public records indicate that the Ritblats and their companies did make donations to the Conservative Party.<sup>187</sup> From internal correspondence reviewed by Kroll, no evidence has been identified that would suggest that Alpha Plus received an unfair advantage in the bidding based on this. Correspondence between RBKC and Alpha Plus executives was limited to factual presentation of Alpha Plus' bid, and Jamie and John Ritblat were copied on several of these emails.

<sup>187</sup> Searches of the UK Electoral Commission's database of donations have identified a donation of GBP 10,000 to the Conservative Party from Jamie Ritblat in 2015,<sup>187</sup> and nine donations totalling GBP 250,000 between 2011 and 2015 from Delancey Real Estate Asset Management Limited. This company is part of the Ritblats' Delancey Group according to media reporting and is ultimately controlled by Jamie Ritblat according to UK corporate records.<sup>187</sup> UK corporate records show that Alpha Plus Holdings PLC, which owns Chepstow House, the school occupying the INC, is also part of the same corporate structure: it is ultimately controlled by BVI company DV4 Limited, reportedly an "investment vehicle of Delancey Real Estate Management Limited,"<sup>187</sup> funded by independent investors.

## 8. North Kensington Library

This section focuses on the decision to lease the NKL to NHP. NKL was the first purpose-built library in Kensington, opened in 1891.<sup>188</sup> The library has been a Grade II listed building since 1984 and is adjacent to NHP. In July 2017, RBKC took the decision to halt all regeneration projects in the borough and as a result NKL remains a public library.

The transaction was chosen for review due to public interest surrounding the library – in particular:

- Community group pressure to keep the library as a public resource;
- Questions raised over whether or not best consideration or value was achieved for the Council by leasing NKL to NHP and whether an appropriate competitive tendering process was followed;

Analysis of this transaction is presented with consideration to the following: Formal decision-making process, internal consultation and scrutiny, the role of advisors and the extent of engagement with the community and other stakeholders.

### Timeline and decision making

In February 2012, RBKC's Head of Library Service, and the Tri-Borough Director of Libraries and Archives<sup>189</sup> presented a document to the Property Planning Board, which recommended that RBKC seek an alternative site for NKL, due to shortfalls in the existing site (set out below) and the potential to raise revenue through its redevelopment.

In May 2013, RBKC's Corporate Property Department presented an option to the Cabinet Member for Housing, Property and Regeneration, Cllr Feilding-Mellen, that NKL would be converted and let to a private school or used for community use.<sup>190</sup> In June 2013, a report was prepared updating the Cabinet Member on various projects by the Director of Corporate Property, which at that time estimated that rental income of GBP 150,000 / year could be achieved through letting the NKL. The estimated cost

<sup>188</sup> Exhibit 138, "New chapter for North Kensington Library," RBKC, 19 October 2018, [weblink here](#)

<sup>189</sup> Certain administrative services are consolidated for Westminster City Council, Hammersmith and Fulham Borough Council and RBKC – these are referred to as the "Tri-borough" services.

<sup>190</sup> Exhibit 139, "Introduction to Corporate Property", 20 May 2012

for developing a new library facility nearby was GBP 3,000,000, which would be funded in part by the leasing of the Isaac Newton Centre (see section 0).<sup>191</sup>

A document circulated to a PPB meeting in January 2014 cited NHP as a likely tenant for NKL.<sup>192</sup> Cllr Feilding-Mellen confirmed this to the Headmistress of NHP in an email in January 2014 and indicated the Council's support for NHP's future ambitions.

Following a further PPB meeting in February 2014, the Director of Corporate Property, Michael Clark, drafted an email to Cllr Warwick Lightfoot Council's to send to NHP on 17 February 2014, setting out that if full market value could be achieved for RBKC, then he could recommend to Cabinet that the lease be approved without an open market exercise – the Council set out a number of criteria in order to negotiate this, including that rental levels would be on open market terms, and that if there were any plans in the future to develop the INC, then NHP would not object to such developments.

Documents prepared by RBKC's Corporate Property Department during this time, as well as internal RBKC correspondence, detailed a number of issues with NKL, which constituted the key rationale for RBKC Cabinet's decision to find an alternative site. These included (but were not limited to): high staffing costs and issues around accessibility for mobility impaired clientele, and the significant level of investment required to resolve these issues on the current site. As part of the 2020 Corporate Property Strategy, there was also a commitment to generate a new stream of rental income from leasing NKL to protect front-line services.

In September 2014, NHP formally confirmed its interest in leasing NKL and offered to pay a "*marriage value*" above market rent to reflect the fact that the NKL was adjacent to their existing site. It was agreed that market rent would be determined by collaboration between the two parties' respective advisors, HNG for RBKC and DJ Levy for NHP. RBKC Cabinet approved the development of a new facility to replace NKL in June 2015. The paper provided to Cabinet set out that a larger library which included space for Community Use and Adult Learning would be built on the site of the Lancaster Youth Centre and adjacent council land.

In September 2015, the decision to lease the NKL to NHP was entered onto the Forward Plan, which Kroll understands was the first public announcement of the discussions with NHP. On 19 November 2015, RBKC Cabinet approved a 25-year lease over NKL with NHP, with an annual rent of GBP 350,000,

<sup>191</sup> Exhibit 140, Report by the Director of Corporate Property and Customer Services to the Property Policy Board, June 2013

<sup>192</sup> Exhibit 141, Property Policy Board minutes, 13 February 2014

and a 12-month rent free period spread out over the first five years. RBKC's Corporate Property Department advocated that this offer represented a premium to open market value, based on commercial advice that found that NHP's status as an adjoining tenant meant no other bidder would offer the same rental levels. There was no marketing exercise to attract other bidders, and the transaction took place off-market. The alternative option considered by Cabinet was to wait until the new library was completed before seeking a new tenant. As above, the option to retain NKL as a public facility was considered, and decided against, given that the Cabinet had already approved the building of the new facility.

Following the decision, a number of local community groups protested in April 2016 and petitioned the Council in October 2016, campaigning to keep the existing library in public use. The Council responded to this petition on 19 October 2016 and did not vote to change the decisions around the transaction.

Following a decision in July 2017 to put all regeneration projects on hold, the lease for NKL was cancelled and the library remains in public use. RBKC Councillors pledged in October 2018 to protect the existing NKL as a front-line facility.

### **Internal consultation and scrutiny**

Outside of RBKC's Corporate Property department and Cabinet, RBKC's Head of Library Services and the Tri-borough Director also provided internal advice which fed into the decision.

RBKC's Housing and Property Scrutiny Committee scrutinised the decision to lease NKL to NHP after the decision had been implemented, in January 2016. The Committee was not satisfied that an adequate competitive process had been followed. Labour Councillors also raised concerns about the timing of the scrutiny and the fact that the decision to lease the NKL was given a one diamond rating according to the scrutiny criteria set out in the Constitution, which classified it as of low public interest and therefore low priority for scrutiny.

The process of scrutiny more generally was challenged by the Chairman of the HPSC, which resulted in an investigation into the Key Decision Process and Scrutiny by RBKC's Scrutiny Manager. The report identified a number of shortcomings in the scrutiny process, including inadequate information presented to committees to assign appropriate diamond ratings, inappropriate allocation of diamond ratings and the need for scrutiny, insufficient time for scrutiny and that the threshold for higher risk transactions that was too low to properly identify those which required more scrutiny.

### **External advisors**

RBKC engaged two external advisors with regards to this transaction: Property agency HNG provided commercial advice and property consultancy Sweett Group conducted a retrospective options appraisal setting out detailed scenarios for redevelopment of the NKL facility with associated costs.

HNG advised RBKC that NHP's status as an existing adjoining tenant to NKL meant that no other bidder would submit a higher offer than NHP. Kroll understands that RBKC also received advice as to the level of expected rent that NKL could generate. Communications showed that RBKC's Corporate Property Department believed this commercial estimate to be too conservative, based on previous experience leasing similar sites. Ultimately, the rental level agreed for NKL with NHP was higher than both the commercial and internal estimate.

RBKC commissioned a report in 2016 by Sweett Group, to appraise three options for retaining NKL as a public facility. The purpose of the report and the content was challenged in a local community blog, which brought into question the accuracy of the projections, given that NHP would have to undertake such refurbishments and would therefore require significant investment itself. As the report was commissioned following the decision, the details contained in the report were not available to decision makers prior to the decision to lease the NKL to NHP.

### **Public relations and community engagement**

RBKC communicated its plans for a new library through the Westway Newsletter, first starting in November 2012. Updates were provided on RBKC plans in each of the newsletter's eight editions until March 2017. In addition, the Council created a dedicated website for its plans and released an article to the media in June 2015 following the announcement that the Council would develop a new library.

No public consultation was carried out prior to the November 2015 decision to lease the NKL to NHP. Consultation was carried out by the Libraries Department in July 2016 on the plans for the new library. Of the 629 respondents, 10% of respondents made comments indicating they were against the re-location of the library or that they were against the NKL being used by a private school. The responses were made in the 'other comments' section of the survey.

The main opposition to this transaction arose after the decision had been taken to lease NKL to NHP and took the form of protests in early 2016 followed by a petition to retain NKL as a public facility in October 2016. The primary concern of those opposed to the decision was that appropriate public consultation was not undertaken prior to the decisions being made, and that the decision-making process lacked transparency.



The Council defended its treatment of the transaction, highlighting the defects with the existing site and highlighting the rental premium which would be obtained and would be used to protect front-line services. Following the tabling of specific action points including the reversal of the decision and a commitment to demonstrate that the new building would better serve the community, the Cabinet ultimately voted to uphold its previous decision to lease the library.

An additional complaint was raised by Edward Daffarn, a community activist and blogger behind the Grenfell Action site, that the Council could not demonstrate best value without a competitive tendering process. Nicholas Holgate, Town Clerk, defended the Council, citing the advice provided by HNG and listing examples of evidence of transparency by the Council in the decision-making process. Mr. Daffarn also complained to the Local Government Ombudsman, who concluded that Mr. Daffarn had not been caused any injustice and that therefore the complaint would not be taken any further.

## 8.1 Rationale for the transaction and formal decision-making

This section examines the basis and rationale for the two key decisions which were made in relation to this transaction: the decision to build a new library and the decision to release NKL from Council operations.

### 8.1.1 The decision to build a new library

The internal proposal to develop a new facility to replace NKL was first put forward by RBKC's Head of Library Service and the Tri-borough Director of Libraries and Archives to the Property Policy Board in February 2012, with the principal rationale that there were shortfalls in the existing site which meant that it was no longer fit for purpose.<sup>193</sup> The proposal stated that NKL was not appropriate for redevelopment to a modern library facility without significant investment to convert the Grade II Listed building.<sup>194</sup> Additionally, analysis conducted by RBKC's Corporate Property department found that NKL had inherent flaws as a modern site. These included that the four-floor layout presented issues for access for the mobility impaired and had higher staff requirements.<sup>195</sup> Heating costs and corresponding environmental impact for the old building were also cited as another operational inefficiency.<sup>196</sup> In light of these factors, the Corporate Property Department suggested that replacing the NKL would reduce operational costs while maintaining service provision.

A further rationale was that the development of a new site would create revenue generating opportunities for the Council, in line with the Corporate Property Strategy. RBKC's Corporate Property Department engaged external advisors to assist with the development of the plans to develop a new facility to replace NKL.<sup>197</sup> In January 2014, the department appointed both an architect and Quantity Surveyor, HNG, to undertake an options appraisal and feasibility study for developing a new facility to replace NKL, including the design of a youth centre and Multi Use Games Area ("**MUGA**"), and surplus space to generate income as part of the same facility.

The Leader's Group discussed the potential new NKL at a meeting on 23 April 2015. According to the minutes of the meeting, Cllr Feilding-Mellen "*was keen to seek views and advice from Leader's Group about whether to honour a previous agreement with Notting Hill Prep to let commercial space in the old library to them at the market rate plus 30%*". Nicholas Holgate, the Chief Executive, noted that the

<sup>193</sup> 28, Property Policy Board minutes, 13 October 2011

<sup>194</sup> Exhibit 143, RBKC Executive Decision Report North Kensington Library, 11 June 2015

<sup>195</sup> Exhibit 144, RBKC Property Board Report Kensington and Chelsea Public Libraries, 9 February 2012; Exhibit 120, The Westway Newsletter Issue 1, 16 November 2012

<sup>196</sup> Exhibit 145, RBKC Executive Decision Report North Kensington Library, 11 June 2015

<sup>197</sup> Exhibit 145, RBKC Executive Decision Report North Kensington Library, 11 June 2015

Council must be able to demonstrate that any potential deal with NHP would be a "*distinct advantage over the current market rate*". The minutes state that "*some members expressed reservations*" but it was suggested that Michael Clark, the Director of Corporate Property, ought to offer NHP market rate plus 30% to NHP and report back to the Leader's Group with NHP's response.<sup>198</sup>

On 11 June 2015, the RBKC Cabinet took the decision to build a new facility to replace NKL<sup>199</sup> at 128a Lancaster Road, fifty metres away from NKL. RBKC's Corporate Property Department set out three options to RBKC Cabinet, as part of their report on developing a new facility as follows:

- **Option 1:** Retain the existing library, which would need to be refurbished, updated and maintained on an ongoing basis. This would require substantial capital and revenue funding. This funding would still not provide a suitably accessible building to house a modern library. Additionally, retaining the existing Youth Centre building would fail to maximise the potential of the site.
- **Option 2:** Build a new, two-storey building containing a new library, youth centre, and roof top multi-use games area. The library would be on the ground floor. The area on the first floor was of insufficient size for the youth centre and MUGA, which meant that the MUGA would need to be accommodated at second floor level. This would result in approximately half the first floor becoming surplus, after allowing for the area required by the youth centre. This surplus space could be let for educational or office use to provide an income for the Council.
- **Option 3:** Carry out the redevelopment proposed and build a new three storey building on a separate site nearby. This would contain a new library and youth centre, with a roof top MUGA. This would result in the entire first floor, plus approximately half of the second floor becoming surplus accommodation after allowing for the area required for the youth centre. Construction costs would be higher for Option 3 than Option 2, but the surplus accommodation could be let for educational or office use. This would provide a higher income than Option 2. This would also optimise the development potential of the site.

Officers from Corporate Property recommended Option 3, which Cabinet approved.

The Corporate Property report which accompanied the Cabinet decision to develop the new facility included detailed figures for Option 2 and Option 3, but not Option 1.

<sup>198</sup> Exhibit 146, Leader's Group Minutes, 23 April 2015

<sup>199</sup> Exhibit 145, RBKC Executive Decision Report North Kensington Library, 11 June 2015

The accompanying report also highlighted the need for a clear communications strategy, noting that *“local and national evidence shows that the closure of libraries is often controversial, therefore, clear communications are essential to ensure that the project is not perceived as being negative”*. Ultimately the new facility was not built after RBKC put all regeneration projects on hold in July 2017.

### 8.1.2 The decision to award the lease to Notting Hill Preparatory School

One of RBKC’s conditions for awarding the NKL lease to NHP in an off-market sale was confirmation that NHP would not challenge Corporate Property’s development plans for INC following its unsuccessful bid. Cllr Warwick Lightfoot, the Cabinet Member for Finance, raised the proposal to lease the NKL to NHP to Cabinet, which they later endorsed. According to documentation surrounding the decision, the lease to NHP was not intended to start until after the new library had been completed, so there would not be any interruption of service provision for library services.

Notes from the PPB meeting on 16 January 2014 state that whilst disquiet was expected following the Council’s decision to award the INC lease to Alpha Plus, *“there were other options available for NHP i.e. space in the vacant library”* and that the PPB *“agreed to work with them”*.<sup>200</sup> The first contact related to this transaction between representatives of RBKC and NHP appears to have been a telephone conversation on 14 February 2014 between Michael Clark and representatives of NHP. The intention of the meeting, according to the minutes, was for Mr. Clark to discuss NHP’s aspirations with regards to expansion. NHP’s Bursar, Caroline Armstrong, emailed Mr. Clark on 14 February 2014 following the meeting to send information about NHP’s property requirements.<sup>201</sup> Ms Armstrong asked Mr. Clark to let her know if NHP’s proposal was what the Council was looking for to assist with their thoughts around the development of NKL. Mr. Clark responded to Ms. Armstrong to say that *“you asked me to write to you to confirm the process and commitment to Notting Hill Prep wit [sic] regards to the proposed future development and letting of existing Ladbrooke Grove Library (NKL) and the development of the INC car park land.”*<sup>202</sup>

<sup>200</sup> Exhibit 147, Property Policy Board minutes, 16 January 2014

<sup>201</sup> Exhibit 148, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014

<sup>202</sup> Exhibit 148, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014

Mr. Clark set out in his response to Ms Armstrong's email that he would be willing to recommend to RBKC's Cabinet that the Council enter into an agreement to lease NKL to the School without an open marketing exercise, were negotiations to lead to full market value, according to the following criteria:<sup>203</sup>

- That rental terms would be also based on open market terms, although as with the rental levels this would not be tested by the market;
- That the above rental levels and terms were reflective of the unique location of the existing NHP school facilities with the adjoining surplus Council facilities, i.e. marriage value and opportunity cost of moving elsewhere;
- That terms were agreed within 6 months of detailed negotiations beginning on the rental levels and lease terms, to be initiated by the Council; and
- That NHP would not object to the Council's development plans and would grant consent to any development rights needed to undertake a development on the INC site, which is adjacent to NHP.

This commitment came after RBKC informed NHP in January 2014 that it would be leasing the INC to Alpha Plus, rather than NHP as set out in section 0 of this report. Prior to sending the email, Mr. Clark sent a draft to Cllr Warwick Lightfoot, the Cabinet Member for Finance, stating that Cllr Lightfoot had asked him to write to the School about the commitment, detailed above, which the Council wishes to make.<sup>204</sup>

Representatives of NHP formally confirmed the school's interest in leasing NKL at a meeting with RBKC officials on 17 September 2014, according to notes of the meeting identified in emails reviewed by Kroll. According to these notes, the school committed to pay the "marriage value" rental premium.<sup>205</sup> It was proposed at the meeting that commercial advisors HNG and DJ Levy would act for RBKC and NHP respectively, to determine market rent.

On 24 November 2014, further discussions were held between NHP and RBKC.<sup>206</sup> Following this meeting, there was some disagreement about the agreed outcomes – according to email correspondence between representatives of RBKC and NHP, NHP representatives understood that if

<sup>203</sup> Exhibit 148, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014

<sup>204</sup> Exhibit 148, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014

<sup>205</sup> Exhibit 149, Grenfell Action Group FOI North Kensington Library Notes of Meeting with NHPS 2014, [weblink here](#)

<sup>206</sup> Exhibit 150, Email from Caroline Armstrong, *RE: NKLYC – notes of letting strategy meeting with NHP on 24/11/14*, 28 November 2014

the two commercial property advisors were unable to agree on the determination of “market rent”, a third party adjudicator could be appointed. A Senior Development Surveyor at RBKC stated in email correspondence that there was no mention of a third-party adjudicator in his meeting notes.<sup>207</sup> He also said that a third party would be of little help to RBKC, as they would need to demonstrate that “*market value*”, plus an uplift to reflect the marriage value, had been obtained. This disagreement took place in email correspondence between representatives of the School and the Council. Mark Nelson-Smith, NHP’s Finance Director, stated that the School proposed to pay an uplift of five percent above market rent. Mr. Nelson-Smith stated that the School’s proposal was structured so that both NHP and RBKC could agree on a “*market rent*” without going to market.<sup>208</sup>

Representatives of RBKC and NHP met again on 27 November 2014. According to notes of the meeting, it was agreed that the Council would lease NKL without making any alterations, with any necessary works being carried out by NHP.<sup>209</sup>

### 8.1.2.1 The Lease Agreement

RBKC Corporate Property recommended that Cabinet approve entering into a lease with NHP over NKL. The following terms were proposed by NHP. Cabinet approved the lease for NKL on 19 November 2015.<sup>210</sup>

<b>Basis of lease</b>	<b>NHP</b>
Term of lease	25 years
Annual Rental	GBP 350,000
Rent free period	12 months spread out over five years
Value of rent free period	GBP 350,000
Total value of rental	GBP 8,400,000

<sup>207</sup> Exhibit 151, Email from Caroline Armstrong, RE: NKLYC – notes of letting strategy meeting with NHP on 24/11/14, 28 November 2014

<sup>208</sup> Exhibit 151, Email from Caroline Armstrong, RE: NKLYC – notes of letting strategy meeting with NHP on 24/11/14, 28 November 2014

<sup>209</sup> Exhibit 152, Email from Mr. Mark Nelson-Smith, RE: NKLYC - Notes of letting strategy meeting with NHP on 24/11/14, 28 November 2014

<sup>210</sup> Exhibit 153, RBKC Executive Decision Report for the North Kensington Library Lease Part B, 19 November 2015

The one-year rent-free period was based on a fit-out cost of GBP 50 per square foot. The area of NKL, according to the report approved by Cabinet, was 6,742 square foot, excluding external areas, thereby resulting in a total nominal cost of GBP 337,100. The rental free period therefore resulted in a net saving for NHP of GBP 12,900.

### 8.1.3 Consideration of alternatives to leasing NKL to NHP

The decision made by RBKC Cabinet on 19 November 2015 to enter into a lease agreement with NHP for NKL also considered the alternative option of leaving NKL empty until the new facility was complete. The report accompanying the decision outlined the two options, as follows:<sup>211</sup>

- **Option 1:** Council does nothing and waits until completion of the new Library facility before securing a new tenant. Under this option, the rental value and future of the building would be uncertain, and the opportunity to obtain a premium above open market value may be lost. Meanwhile, the Council would be obligated to fund maintenance and running costs.
- **Option 2:** Council enters into an Agreement to Lease based upon a significant premium above open market value. Open market value would be indexed from the date of entering into the agreement until the date of the handover, following the relocation to the new library facility. NHP would not be able to use the facility until the new library was operational. This option would remove the risk and uncertainty by securing a letting based upon a predetermined rental level to provide a return to contribute to the cost of the new library building. This would also remove the obligation for both the fit-out of the building and ongoing costs of maintenance which were relatively high due to the age configuration and design of the building.

The report recommended Option 2, to enter into a lease with NHP, on the basis that this would secure future revenue for the Council and that this revenue had a premium above open market value.

### 8.1.4 The decision to keep the library in its current use

NKL remains a public library following the reversal of the decision to lease the facility to NHP. On 24 July 2017, RBKC announced to Channel 4 News that all regeneration plans in the borough, including the development of a new library, were on hold.<sup>212</sup> RBKC said in a statement that “*following the Grenfell*

<sup>211</sup> Exhibit 154, RBKC Executive Decision Report for the North Kensington Library Lease, 19 November 2015

<sup>212</sup> Exhibit 155, “Kensington Council library plan on hold after Grenfell,” Channel 4 News, 24 July 2017, [weblink here](#)

*tower fire and the subsequent selection of a new Council leader and Cabinet, we are looking again at project's across the borough to take stock and listen to local communities".* On 20 October 2018, RBKC Councillors presented a cross-party memorandum of understanding to campaigners opposed to the leasing of NKL, with a pledge to protect the library as a public facility.<sup>213</sup>

## 8.2 Internal consultation and scrutiny

### 8.2.1 Internal consultation

Documents reviewed by Kroll identified that during the decision making process to build a new facility to replace NKL, the Corporate Property Department engaged with several internal stakeholders, including representatives of the Library Service and the Youth Centre, RBKC's Head of Strategic Procurement, RBKC's Director of Law, representatives of RBKC internal Corporate Finance Department, the Cabinet Member for Families and Children's Services, and the Cabinet Member for Education and Libraries.<sup>214,215</sup>

The decision to lease NKL to NHP was subject to scrutiny by the Housing & Property Scrutiny Committee. However, the timing of the scrutiny raised some questions which are discussed in more detail below.

### 8.2.2 Timeliness of scrutiny

RBKC's Housing & Property Scrutiny Committee had the opportunity to scrutinise the decision to lease NKL to NHP only after Cabinet had approved the decision on 19 November 2015, and after the lease had been signed on 23 November 2015.<sup>216</sup> The report provided to HPSC for its meeting on 5 November 2016 contained details on the appointment of contractors and consultants to complete the refurbishment works.<sup>217</sup> According to the minutes of the same meeting, Councillor Press requested confirmation on whether consultation had started on the proposed redevelopment, to which Cllr Feilding-Mellen responded that the consultation would be managed by the Library Service and Mr.

<sup>213</sup> Exhibit 156, "North Kensington Library campaigners triumph as Kensington and Chelsea council seeks to rebuild trust after Grenfell," *MyLondon*, 26 October 2018, [weblink here](#)

<sup>214</sup> Exhibit 157, RBKC Executive Decision Report North Kensington Library, 11 June 2015

<sup>215</sup> Exhibit 158, Email from Mr. Michael Clark, *RE: NHP draft proposal*, 17 February 2014

<sup>216</sup> Exhibit 159, Email from Cllr Quentin Marshall, *Re: Key Decision re: North Ken Library Lease*, 7 January 2016

<sup>217</sup> Exhibit 160, Housing and Property Scrutiny Committee, Report by the Cabinet Member for Housing Property and Regeneration, 5 November 2015, [weblink here](#)



Clark would provide further details to the Committee.<sup>218</sup> As the Cabinet paper was not finalised on the decision to lease the NKL to NHP, limited information was provided to the HPSC on the decision.<sup>219</sup>

The next meeting of the HPSC was on 6 January 2016<sup>220</sup>. Cllr Quentin Marshall, the Chair of the HPSC, requested confirmation at the meeting that RBKC obtained best value, to which Mr. Clark responded that the process undertaken had been agreed by Cabinet. According to the available minutes, the HPSC “*expressed concerns that an open, competitive process had not been followed*” in the case of NKL. Mr. Clark responded to these claims, stating “*a significant premium had been agreed with NHP and that the base value and the premium was supported by an independent agent and local agent*”. The HPSC expressed dissatisfaction with the process and Marshall requested the decision to be investigated and called-in if possible.<sup>221</sup>

In an email to the Senior Governance Administrator, and Tony Redpath, Director of Strategy and Local Services, on 7 January 2016, Cllr Marshall stated that the Committee was not aware of the decision until it had been presented to them and expressed serious concerns. Cllr Marshall stated that the committee would have “*called it in*” and outlined what he saw as clear failures in the scrutiny process. As the decision had been implemented, the Committee were unable to provide further scrutiny. Cllr Marshall stated that he was never consulted about the detail of the decision, although he stated in internal communication that this is not the fault of the Corporate Property team, but the process of scrutiny itself. According to internal communications from Cllr Marshall, the process would be better served by removing scrutiny entirely as it would remove the pretence of oversight and involvement, which he felt was lacking.<sup>222</sup> Cllr Marshall reiterated these concerns in an interview with Kroll, stating that it was not an effective process for scrutiny since the onus was on himself and other committee Members to identify the most significant decisions that warranted scrutiny, as opposed to on Officers to clearly flag relevant decisions.

As a result of Cllr Marshall’s comments, an investigation into the Key Decision Process and Scrutiny was undertaken and reported on in February 2016 by RBKC’s Scrutiny Manager and the Director of Strategy and Local Services. The report identified the following:<sup>223</sup>

<sup>218</sup> Exhibit 161, Housing and Property Scrutiny Committee, Minutes, 5 November 2015, [weblink here](#)

<sup>219</sup> Exhibit 162, Report by Scrutiny Manager and Director of Strategy and Local Services, February 2016

<sup>220</sup> Exhibit 163, Housing and Property Scrutiny Committee, meeting agenda 6 January 2016, [weblink here](#)

<sup>221</sup> Exhibit 164, Housing and Property Scrutiny Committee Meeting, Minutes, 5 January 2016, [weblink here](#)

<sup>222</sup> Exhibit 159, Email from Cllr Quentin Marshall, *Re: Key Decision re: North Ken Library Lease*, 7 January 2016

<sup>223</sup> Exhibit 165, Email from the Scrutiny Manager, *Disregard of Scrutiny Concerns & Duties*, 12 April 2016. Exhibit 163, Report by Scrutiny Manager and Director of Strategy and Local Services, February 2016

- Scrutiny Committee Chairs had previously raised concerns about the Key Decision Process.
- Cllr Marshall had raised concerns about the KD process related to the decision to lease the North Kensington Library.
- The Housing and Property Scrutiny Committee, chaired by Cllr Marshall, was not satisfied that there had been an appropriate competitive process for the lease. The call-in period (the period when scrutiny committees could address concerns over decisions) had lapsed by this point.

The report set out the following issues in relation to the adequacy of the scrutiny process:

- The Scrutiny Chairman and committee, as part of the normal process, were not provided with all the details of the transaction which were required to consider the transaction effectively. For example, the confidential sections of the report to Cabinet, Part B were not automatically included in the scrutiny pack and had to be specifically requested. With regards to NKL, Part B included specific details about the rationale for conducting the transaction off-market, and included details of the pre-let negotiations. Cllr Marshall was therefore unable to make an informed decision on the appropriateness diamond rating of one diamond which, as set out in Section 5.2.4., was the lowest rating from the perspective of impact and public interest.
- The HPSC was briefed at its meeting on 5 November 2015 that the decision of the Corporate Property Department to enter into an agreement to lease NKL and WIC would be presented to Cabinet on 19 November 2015. This was the deadline for papers to be submitted to the November Cabinet. The deadline for papers to be submitted for the November Scrutiny Committee was 21 October. This meant that the report was ready for November Cabinet, but not November Scrutiny.
- RBKC's financial threshold for a transaction to be considered a Key Decision was at that time GBP 100,000, meaning that the HPSC Chairman had a considerably high number of KDs to consider.

The report concluded that it was communications, and not the process itself, which were the crux of the issue. This does not address the discrepancy between the date for submission for scrutiny and for Cabinet, which ultimately resulted in the decision to lease NKL to be approved without adequate scrutiny.

## 8.3 Involvement of external advisors

RBKC engaged one external advisor, property agent HNG as part of the decision-making process related to this transaction. After the decision to lease NKL to NHP was taken, RBKC engaged Sweett Group, a physical assets management consultancy, to analyse the potential options for the future of NKL and to provide justification over the decision made to lease the library rather than refurbish it.<sup>224</sup> Details of the specifics of scope of the external advisors' work is set out below.

### 8.3.1 HNG

HNG, a property agency offering chartered surveying and property valuation and management, was engaged by RBKC to act as their representative in discussions with NHP regarding the lease for NKL. HNG also acted for RBKC in the INC transaction (see section 0).

HNG advised RBKC that no other bidder would offer a rent higher than NHP, as the adjoining tenant benefit enjoyed by NHP was unique. Nicholas Holgate, RBKC's Town Clerk, cited this advice to justify the Council's decision not to conduct an open bidding process.<sup>225</sup>

### 8.3.2 Sweett Group report

In September 2015, Sweett (UK) Limited ("Sweet Group"), a property consultancy, were appointed as consultants to facilitate the delivery of four capital projects being undertaken by RBKC, including the building of the new NKL facility. According to the Cabinet Report, Sweet Group's appointment would "*provide an opportunity to generate programme savings, provide consistency in service delivery, streamline and reduce reporting, reduce officer time and undertake one procurement exercise for all four projects*". Sweett Group, would provide project management, quantity surveying and contract administration services as part of these engagements.<sup>226</sup>

As part of the NKL engagement, Sweett Group appraised three different funding options for retaining NKL as a public library in 2016, after the decision had been taken to lease the NKL to NHP.<sup>227</sup>

<sup>224</sup> Note that this report was commissioned after the Key Decision had been made.

<sup>225</sup> Exhibit 166, email from Mr. Nicholas Holgate, *RE: Disregard of Scrutiny Concerns and Duties FORMAL COMPLAINT*, 31 May 2016

<sup>226</sup> Exhibit 167, Cabinet Report for the Appointment of the Client Side Team to lead and facilitate the delivery of the: (1) North Kensington Day Care and Community Hub; (2) Chelsea Old Town Hall; (3) North Kensington Library; and (4) Colville School, 17 September 2015, weblink [here](#)

<sup>227</sup> Exhibit 168, "*North Kensington Library*", Grenfell Action, 8 February 2017, [weblink here](#)

The report detailed the existing issues with NKL and set out an estimation of costs for the three options which were previously assessed by Corporate Property:

- **Option 1:** A minor refurbishment with no major changes, costing GBP 3 million.
- **Option 2:** A major refurbishment with the addition of a mezzanine floorplate, costing GBP 7 million.
- **Option 3:** A major refurbishment, remodelling and extension of a mezzanine floor plate, and an extension of 267 square metres, providing an extra floor at the upper level, costing GBP 10 million.

The report concluded that none of the options addressed the issues that existed with NKL, such as the layout of the site. Grenfell Action commented that RBKC had approached this budget estimating exercise in an “*underhand way*”. According to Grenfell Action, RBKC requested that each option include the cost of installing a Multi-Use Games Area, which, according to Grenfell Action was inconsistent with the description of Option 1 as a minor refurbishment.

The blog appeared to bring into question the validity of the estimates, raising the challenge that NHP would not be interested in renting the property if it also had to undertake similar refurbishments as identified in the Sweett Report, and suggesting that the estimates had been inflated to justify the decision to build a new library and lease the old one. Kroll has not identified any evidence to support this allegation. Furthermore, no detailed plans for NHP’s use of the building have been identified and to what extent the school would need to refurbish the building.

## 8.4 Public relations and community engagement

The following sections set out the steps that RBKC took to publicise the decisions and rationale surrounding the proposed new library building and the subsequent leasing of the existing building to NHP. This included a leaflet and poster campaign, a series of newsletters and a designated website.

In addition to this, a detailed survey was undertaken by the Libraries Service in July and August 2016 to understand the views from the public on the proposed new library's services.

Despite this, certain community groups felt that they had not been consulted in respect of the decision to lease the NKL, and their views had not been considered. This resulted in protests against the leasing of the library and a petition being brought to full council.

### 8.4.1 RBKC communication with the public regarding the transaction

RBKC produced a leaflet and poster regarding the proposal to develop a new facility to replace NKL in 2012 which was displayed within NKL. Additionally, library and youth centre staff were briefed so that they could respond to queries from local residents about RBKC's plans. RBKC set up a dedicated webpage, [www.rbkc.gov.uk/nklibrary](http://www.rbkc.gov.uk/nklibrary), which included information about the proposal to develop a new facility. The site gave users the opportunity to sign up to updates. The webpage is no longer active.

To communicate with local residents, RBKC published the first issue of the Westway Newsletter on 21 November 2012.<sup>228</sup> The newsletter's stated intention was to keep local people informed about ambitions and proposals for several Council owned sites in the Westway area. The first issue broached the idea of building a new Library, listed under the title '*Ambitions and Proposals*'. The second issue was distributed in February 2013, and detailed RBKC's intention to begin consulting with library users and local residents on what they would like to see in the new library.<sup>229</sup> RBKC continued to provide updates in the Westway Newsletters published in March 2014, September 2014, July 2015, June 2015, December 2015, June 2016 and March 2017.

The Media and Communications Officer for RBKC noted at a CCSSC meeting on 21 November 2016 that the NKL project had represented significant challenges for the team.<sup>230</sup> At the same meeting, Mel Marshman, the Head of Community Engagement at RBKC, introduced a report on the Council's consultation process. The minutes highlighted that "*various residents and residents groups in the North and*

<sup>228</sup> Exhibit 120, The Westway Newsletter Issue 1, 16 November 2012

<sup>229</sup> Exhibit 169, The Westway Newsletter Issue 2, 12 August 2013

<sup>230</sup> Exhibit 170, Cabinet and Corporate Scrutiny Services Committee Minutes, 21 November 2016, weblink [here](#).

*South of the Borough have complained about how the Consultation Process appears to operate, and this was especially true with regard to the proposed new North Kensington Library*". The minutes stated that the consultation principles were outdated and there were financial pressures on the process. Cllr Dent Coad, the Chair of the CCSSC, was noted in the minutes suggesting that "*much mis-trust exists with residents around consultations*". Cllr Dent Coad agreed to provide a further report to scrutinize the consultation process in a future meeting.<sup>231</sup> A working group was subsequently formed in March 2017 to scrutinize RBKC's consultation processes.<sup>232</sup>

## 8.4.2 Engagement with the community and responding to challenges

Following the decision to lease NKL to NHP the Council received a number of challenges from community groups, details of which are set out below.

### 8.4.2.1 Opposition to lease

The primary opposition to the lease of NKL came from Grenfell Action on its blog site and the 'Save North Kensington Library' petition. This opposition took place after the decision to lease NKL had been taken by Cabinet and took the form of protests and a petition to save the library.

Grenfell Action published their first article on the NKL decision in February 2016.<sup>233</sup> The article highlighted RBKC's plans to lease the NKL to NHP and stated their opposition to the decision. Edward Daffarn, the spokesperson for Grenfell Action made a complaint to RBKC about the decision-making process in March 2016, as detailed in Section 8.4.3.

### 8.4.2.2 Save North Kensington Library Petition

In early 2016, there were a series of protests outside NKL, peaking with a congregation of seventy-five on 26 April 2016, according to media reports.<sup>234</sup> These protests were followed by a petition to save NKL which was considered by RBKC on 19 October 2016.<sup>235</sup> The petition was initiated after the decision to lease NKL had already been taken.<sup>236</sup>

<sup>231</sup> Exhibit 171, Cabinet and Corporate Scrutiny Services Committee Minutes, 21 November 2016, weblink [here](#).

<sup>232</sup> Exhibit 172, Cabinet and Corporate Scrutiny Services Committee Minutes, 20 March 2017, weblink [here](#).

<sup>233</sup> Exhibit 173, "What Future for North Kensington Library?" Grenfell Action Group, 27 February 2016, [weblink here](#)

<sup>234</sup> Exhibit 174, "Council accused over plans to lease Kensington's oldest library to private school," *Evening Standard*, 29 April 2016, [weblink here](#)

<sup>235</sup> Exhibit 175, RBKC Council Meeting Documents 19 October 2016, [weblink here](#)

<sup>236</sup> Exhibit 176, Email from Head of Governance Services, *Save North Kensington Library - Petition, Report for Council (Ordinary Mtg) on 19 October*, 27 September 2016

The petition made the following demands:

- Keep NKL in public use, using the Council’s cash reserves;
- Call on the Leader of RBKC to attend a public meeting to hear concerns on the lease, answer questions over plans and dealings with all public and community space in North Kensington, and address concerns about the lack of consultancy and transparency in the decision-making process;
- Hold a public consultation on how the building should be used if it is not to continue as a library; and
- RBKC’s planning committee should consider community access as a factor in ascertaining ‘best value’.

The petition quoted a Senior Development Surveyor and contact Officer for the decision to lease NKL, as saying residents were not consulted specifically about the provision of a new library. It is not clear when and where the Senior Development Surveyor said this. Grenfell Action echoed the point about a lack of public consultation in a May 2016 blogpost.<sup>237</sup>

The petition was considered by a cross-party group of RBKC Councillors at a Full Council debate on 19 October 2016.<sup>238</sup> The Councillors recommended that Cabinet Members note the representations of the petitions and any views expressed by Councillors. The minutes of the Council meeting note support for the petition from Councillors Thompson and Dent Coad, later Labour Member of Parliament for Kensington from 2017 to 2019.<sup>239</sup> Cllr Press proposed, the following points, which were subsequently seconded by Cllr Littler:

- The Council would “*publish and provide evidence to support its reasons for considering that the current building [was] no longer fit for purpose and that public funds [were] better spent on building a new library and not in repairing and improving the current building and preserving it as an upgraded library; and fully involve and consult with the community on this evidence.*”
- The Council would “*review and reverse its decision to enter a pre-lease agreement with a private preparatory school on the current North Kensington Library building, recognising that the process did not involve an open and competitive tender and did not follow the Council’s best practice guidelines and could be challenged.*”; and

<sup>237</sup> Exhibit 177, "RBKC - Autocratic Power and Sham Constitution," *Grenfell Action Group*, 22 May 2016, [weblink here](#)

<sup>238</sup> Exhibit 178, RBKC Corporate Property Draft Response to North Kensington Library Petition, 19 October 2016

<sup>239</sup> Exhibit 179, RBKC Council Meeting Documents, 19 October 2016, [weblink here](#)

- If *“the Council [could] demonstrate and the community agrees that a new building library [would] better service their needs, the old building [would] remain in public use, offering direct services to the public, and the Council [would] fully consult the community on its proposals for the building’s future use as “an asset of community value”.*

Cllr Will, the Cabinet Member for Education and Libraries, seconded by Cllr Faulks, proposed an amendment as follows:

- The Council supports the building of a new library. It will be bigger and better than NKL and will help to generate revenue to fund front-line services, including libraries.
- The successful management of the Council’s property portfolio has made a significant contribution to improving quality of life for residents in the Borough, and leasing NKL will contribute to this.<sup>240</sup>

Cllr Will’s amendment was approved by a vote of the Councillors. RBKC Councillors thereby reaffirmed their commitment to leasing NKL to NHP on the basis basis that the amended motion was the political will of the majority of representatives.

#### 8.4.2.3 Consideration of equality impact

The decision to build a new library made in June 2015 included comments on the equality implications. The public report stated that an Equality Impact Assessment would be carried out in early May 2015, however the results were not confirmed in the decision report. The report noted that *“a favourable assessment is expected as the library will be relocated a short distance from the existing provision and accessibility of the new library premises will be to current standards”*.<sup>241</sup>

The public decision report noted that *“there are no equality implications arising from the contents of the report”* for the decision to lease the NKL and the WIC, and an Equality Impact Assessment was not carried out.

<sup>240</sup> Exhibit 180, Minutes of a meeting of the Council, 19 October 2016, [weblink here](#)

<sup>241</sup> Exhibit 181, Executive Decision Report, 11 June 2015, [weblink here](#)



### 8.4.3 Challenge to decision making process

Concerns about the decision-making process related to this transaction were raised by Edward Daffarn, as well as Members of the RBKC Labour Party group in March and April 2016.

Mr. Daffarn challenged RBKC's claim to have obtained best value in its negotiations with the School and the general lack of transparency, in a complaint sent to Mr. Holgate in March 2016.<sup>242</sup> Mr. Daffarn raised concerns that, without a competitive tendering process, RBKC could claim to have obtained best value and asked the Council to investigate why there was no such process.

Mr. Holgate responded to Mr. Daffarn's complaint defending the lack of a competitive tendering process.<sup>243</sup> He stated that HNG, the agent representing the Council in negotiations, had a track record in marketing numerous similar units in the local area, and as such were well placed to advise the Council. Mr. Holgate said that RBKC had instructed HNG to carry out a Royal Institute of Chartered Surveyors' 'Red Book' valuation of the asset, which would be sufficient to satisfy the requirement under Section 123 of the Local Government Act 1972 which requires Councils not to dispose of land for less than best consideration. Mr. Holgate defended the decision to grant the lease to NHP based on the advice received by HNG that, NHP was a special purchaser, due to their status as the adjoining tenant and as such, RBKC could expect a significantly higher rent from the School than any other potential bidder. Additionally, Mr. Holgate highlighted a number of actions taken by RBKC which outlined where the Council had made its intentions regarding NKL clear. These actions included:

- A paper sent to HPSC in May 2015 declaring RBKC's intentions to lease the NKL.
- The decision entered onto the Forward Plan on 14 May 2015 for the provision of a new North Kensington Library and Youth Centre redevelopment. A report was also provided to Cabinet in advance of their meeting on 11 June 2015 on the same matter.
- The decision entered onto the Forward Plan on 22 September 2015 for the Approval and Entry into Agreement to Lease and Lease for the WIC and NKL, which was subsequently approved by Cabinet on 19 November 2015.

Mr. Daffarn responded to Mr. Holgate that he did not accept his arguments, and expressed his intention to escalate his complaint. Later, in June 2016, Mr. Daffarn submitted a complaint to the Local

<sup>242</sup> Exhibit 182, Email from Cllr Quentin Marshall, *Re: Complaint- North Kensington Library*, 19 March 2016

<sup>243</sup> Exhibit 182, Email from Cllr Quentin Marshall, *Re: Complaint- North Kensington Library*, 19 March 2016

Government Ombudsman (“LGO”).<sup>244</sup> The LGO contacted Mr. Holgate to inform him of the complaint, and attached its draft response, which stated it would not take its investigation any further as Mr. Daffarn has not been caused any injustice due to the Council's actions.<sup>245</sup>

In another challenge, the Leader of the Labour Party Grouping of RBKC Cllr Robert Atkinson submitted a complaint to Mr. Holgate via email on 11 April 2016, that the decision to lease NKL to NHP lacked due process and that scrutiny committee concerns were not recognised.<sup>246</sup> Cllr Atkinson commented that “*flagrant disregard of the scrutiny process*” as well as a “*very unwise approach to a highly sensitive decision being keenly observed by the local community.*” Cllr Atkinson wrote that this would confirm to local taxpayers that their concerns are not valued, and neither are those of the HPSC, or Labour and Conservative Councillors.<sup>247</sup> Cllr Atkinson commented that the decision to lease NKL was opposed to by users of the library and local residents.

In response to Cllr Atkinson, Mr. Holgate sent a similar email to that which he sent to Mr. Daffarn in March 2016, as detailed above. Cllr Blakeman responded to Mr. Holgate's response on 23 May 2016, stating that Mr. Holgate's reply reinforced concerns about the democratic process of scrutiny, and its failure to be observed by RBKC.<sup>248</sup> Cllr Blakeman pointed to the purchase of K&CC's Kensington Centre and the options appraisal of Silchester East and West as further instances of RBKC not properly scrutinising decisions. See Section 10 for analysis of the Kensington Centre transaction. The Silchester East and West transaction is not in the scope of this Independent Review.

## 8.5 Conclusions

In overview, the documents and communications reviewed by Kroll identified that the decisions made relating to the NKL transaction were aligned with the Corporate Property Strategy 2020. As NKL would become surplus to requirements once the new library was completed and operational, the site could be leased to create additional revenue. Documents reviewed by Kroll demonstrate that the refurbishment cost for RBKC was significant if the facility was to be maintained.

In general, Kroll identified that Members and Officers appeared to adhere to the requirements and standards as set out by the Constitution, including the seeking of advice, escalating decisions

<sup>244</sup> Exhibit 183, Local Government Ombudsman Letter to Nicholas Holgate, 2 June 2016

<sup>245</sup> Exhibit 184, Local Government Ombudsman Draft Decision, 2 June 2016

<sup>246</sup> Exhibit 185, Email from Scrutiny Manager, *Disregard of Scrutiny Concerns & Duties*, 12 April 2016

<sup>247</sup> Exhibit 186, Email from Head of Governance Services, *RE: Disregard of Scrutiny Concerns and Duties FORMAL COMPLAINT*, 28 June 2016

<sup>248</sup> Exhibit 186, Email from Head of Governance Services, *RE: Disregard of Scrutiny Concerns and Duties FORMAL COMPLAINT*, 28 June 2016

appropriately and demonstrating best consideration for the lease of the NKL. Alternative options were appraised by decision making groups and external consultation was considered in respect of plans for the new library.

Challenges were raised from community interest groups that the off-market negotiations of the lease with NHP were not aligned with the principle of transparency of decision making. While the public were not informed of the specifics of the arrangement, documents reviewed by Kroll identified that there was a clear rationale for not running an open-market exercise, notably that revenue generated for the Council would be significantly higher under the arrangement with NHP than on the open market.

Scrutiny of the transaction did not allow sufficient time for the appropriate committees to challenge and call-in the transaction, and the decision was not brought to the HPSC until after the decision had been implemented (or actioned) on 23 November 2015 through an agreement to pre-let entered into by RBKC and NHP.

In terms of communication with the public, Kroll identified a number of channels whereby the decisions were presented to the general public, for example through the Westway Newsletter. Despite this certain groups still raised concerns on the level of Council engagement. The petition to save North Kensington Library was considered by Full Council and the decision was ultimately upheld based on the rationale as set out in the preceding sections.

### 8.5.1 Propriety of Officers and governance

Based on the documents reviewed, it appears that Officers and Members conformed to RBKC's constitutional framework in their leasing of NKL. RBKC sought out relevant internal and external advice at multiple stages in the process. The decision was discussed at the Property Policy Board and other relevant bodies. The decision was entered onto the Forward Plan before being approved by Cabinet. The Council was able to demonstrate that it had achieved best consideration for the lease of the site.

The review identified that the scrutiny process did not appear to have been effective in the context of the requirements set out in the Constitution. In particular, RBKC's 2015 Constitution, in force during the NKL transaction, states that scrutiny committees are empowered to "*review and scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions*". In this transaction, the Chairman of the Housing & Property Scrutiny Committee stated he would have called in the decision but it had already been implemented by the time the decision was discussed in a scrutiny meeting in January 2016. This issue was identified in the Scrutiny Manager's investigation into the scrutiny process, following complaints by Quentin Marshall, Chair of the committee.

### 8.5.2 Alignment with strategy

The decision to lease NKL formed part of the Council's policy of identifying and generating new revenue streams through releasing sites surplus to operational requirements. This policy was a core component of RBKC's 2020 Corporate Strategy. NKL was rendered surplus to requirements following Cabinet's decision to build a new library. From documents reviewed by Kroll it appears that there the impact on service level was considered to be positive, given the development of the existing NKL would only commence once the new library became operational and that the new library would be more accessible.

### 8.5.3 Consideration of options and rationale for decisions

During the decision-making process to build a new library, an option was considered to retain the NKL in its current use, according to the report which accompanied the decision. When the decision to lease NKL had already been made, a more detailed appraisal was conducted by Sweett Group which appraised some detailed analysis and costings of options. Kroll has not reviewed this report as part of the documents obtained from the Client but has identified part of this report from the Grenfell Action blog. This report supported the rationale of the decision to take the library out of public use and to lease it.

RBKC did not conduct an open market bidding process before deciding to award the lease to NHP. RBKC received commercial advice which opined that no other bidder would offer as much as NHP, due to the additional value that NHP would obtain from the lease due to their status as an adjoining tenant. When NHP submitted a detailed proposal, this did indeed offer a rental value which exceeded previous commercial and internal estimates for market rent.

### 8.5.4 Response to specific allegations

Questions were raised by Grenfell Action as to whether or not best value was achieved for the Council in respect of Section 123 of the 1972 Local Government Act by leasing NKL to NHP and whether an appropriate competitive tendering process was followed. In addition, there were concerns about whether there would be an effect on the provision of library services in the North Kensington area.

#### **Kroll Analysis:**

The Corporate Property Department identified from the onset of negotiations that they would need to confirm that NHP's offer represented best consideration. It was agreed with NHP that rental terms would be based on open market terms and reflective of the "marriage value" the site represented, being next to NHP's existing facilities. The offer of GBP 350,000 per annum represented a rental premium. No competitive tendering process was completed as the transaction was carried out off market. RBKC

engaged HNG to comment on the rental levels offered, who subsequently advised that no other bidder would offer a rental figure higher than NHP.

The NKL would continue to operate until the newly developed facility was completed, at which point NHP would commence their tenancy. Kroll did not identify any indication that services at the library would be interrupted or affected.

The concept of “Best Value”, which states that councils should consider overall value, including economic, environmental and social value when reviewing service provision, was not referred to by RBKC in the Cabinet Reports and decisions taken in respect of the leasing of NKL. As stated above, service provision would have been unaffected by the decision as the NKL would remain in operation until the new facility had been completed.

## 9. The Westway Information Centre

This section focuses on the 2015 leasing of the Westway Information Centre (“**WIC**”) to Notting Hill Preparatory School (“**NHP**”). WIC was an RBKC facility that housed a variety of Council back-office support services including adult social care and social services support staff, as well as the Citizens Advice Bureau (“**CAB**”), a network of consumer charities. RBKC Cabinet approved the lease agreement over WIC with NHP in November 2015. NHP moved into WIC in 2018 and sub-let part of the space to the sandwich chain Pret a Manger.

The transaction was chosen for review due to particular public interest and concerns surrounding the transaction, specifically:

- That local action groups felt that the change of use of the WIC was in contravention of one of the central policies of the Local Plan, policy CK1, which relates to maintaining and promoting social and community uses for Council assets; and
- That the Council providing external renovations to the WIC prior to the lease to NHP constituted a form of subsidy to a private enterprise.

Analysis of this transaction is presented with consideration to the following: Formal decision-making process, internal consultation and scrutiny, the role of advisors and the extent of engagement with the community and other stakeholders.

### **Timeline and decision making**

The King Sturge Review identified the WIC as one of three sites which were found to incur the greatest ongoing cost to RBKC and had the greatest potential for redevelopment. The review recommended the development of a new Council hub at Malton Road, to which RBKC back office services could relocate.

Discussions within RBKC about obtaining a tenant for the WIC began in November 2012, with initial proposals by the Corporate Property Department including that the WIC be leased to a major national retailer. In the same month, RBKC engaged property consultants Lambert Smith Hampton (“**LSH**”) to identify how the Council could generate the best rental income from the site. RBKC also first published the Westway Newsletter, a pamphlet for residents in the Westway area, in November 2012. It was announced in this Newsletter that Council offices housed within WIC could be relocated, and that the site would be better used as a commercial space.

In order to market the WIC to a wide range of bidders, RBKC sought to change the use of the site from D1, community use site to C1, commercial use. The application to change the use was submitted in February 2014. RBKC had set out its intention to change the use in the second issue of the Westway Newsletter, published in July 2013. Concerns were raised about the change of use by local community and stakeholder groups.

In October 2014, RBKC's Cabinet approved a budget of GBP 350,000 for strip-out works for the site.<sup>249</sup> The rationale for this decision, according to RBKC's Corporate Property Department, was that the Council would benefit from a shorter rent free period being sought by prospective tenants during lease negotiations for the site if fundamental refurbishments had been undertaken prior to the start of the lease. By the end of October 2014, the site had been vacated, apart from the CAB, which was relocated in January 2015 to a road parallel to the WIC. This was intended to be a temporary move, with the CAB being informally offered space in the new library building which was under discussion at the time. The Pepper Pot Club, a community group centre for elderly residents was also housed in the WIC but was outside the scope of the lease to NHP. The Pepper Pot Club remains on the site.

In early 2015, RBKC engaged property agency HNG to carry out an open marketing exercise and bidding process for the WIC. HNG were instructed to obtain best offers for the site by 23 October 2015.

The two highest bidders for the WIC were NHP and Second Home, a serviced office provider. In June 2015, the Cabinet Member for Housing, Property and Regeneration, Cllr Feilding-Mellen met with Second Home's founder, Rohan Silva. Second Home submitted their bid the day after the two met. Later, in July 2015, Cllr Feilding-Mellen highlighted Second Home's bid to RBKC's Director of Corporate Property, and RBKC's Head of Investment and Development. The Director of Corporate Property responded that RBKC should market the site "*like all the commercial sites we market which is for the highest and best offer*". By September 2015, NHP and Second Home had both submitted offers with an identical rental level, although other terms of the offers at that point were not clear. Second Home submitted an increased offer on 8 October 2015. NHP made its final offer shortly afterwards.

In September 2015, RBKC Cabinet approved improvements to the external façade of the WIC. The proposed improvements were, according to the Corporate Property Department, intended to deliver an improvement to the aesthetic quality and energy efficiency of the building, as well as providing the opportunity to optimise the potential rental income from the site. RBKC's Planning Committee also approved the Council's application to change the use of WIC in September 2015. The approval

<sup>249</sup> Exhibit 187, RBKC Cabinet Decision Report for WIC strip-out works, 30 October 2014

acknowledged that the application technically was not in line with RBKC Policy CK1, which seeks to protect community and voluntary spaces in the borough, but that the broader objectives of the Council, including protecting the long term provision of Council services could be better met by the leasing of the site to generate revenues for the Council.

RBKC Cabinet approved NHP's proposal for NKL in November 2015, which offered a longer lease term, a higher rent, and a shorter rent-free period than the Second Home bid.

Protests took place at WIC in February 2018 as NHP and Pret a Manger moved into the site.

### **Involvement of external advisors**

RBKC engaged three external advisors, all property consultants, to advise them on the transaction: Lambert Smith Hampton, HNG, and Daniel Watney LLP.

Lambert Smith Hampton conducted a feasibility study for leasing the WIC as part of its broader engagement with RBKC for providing property services. HNG were engaged to market WIC to bidders, and to manage the bidding process. Daniel Watney LLP ("**Daniel Watney**") was engaged to submit the change of use application for the WIC. The involvement of Daniel Watney was criticised by community groups due to the perceived breach of policy CK1 of the Core Strategy.

### **Public relations and community engagement**

Kroll identified communications between RBKC and local residents and stakeholder groups prior to and during the decision-making process to lease the WIC to NHP made through the Westway Newsletter. Eight issues of the Westway Newsletter have been published to date. RBKC plans for the WIC were included in all eight editions from November 2012 to March 2017. The first edition, published in November 2012, raised the suggestion that services within WIC could be rehoused, and that the site would be better utilised as a commercial space.

There was opposition to the change of use of WIC from local community groups, including Grenfell Action Group. Their concerns were focused on the Council's willingness to ignore Policy CK1 in order to suit their commercial objectives. Concerns were also raised about a broader trend of a shortage of space within the borough designated for community and voluntary uses. It is Kroll's understanding that the WIC was predominantly used for Council offices rather than for community / voluntary use and that these offices were predominantly relocated to the Malton Road Hub as part of the SPACE programme and alternative premises for the CAB were identified in close proximity to the WIC.



## 9.1 Rationale for the transaction and formal decision-making

### 9.1.1 The decision to release the site

WIC was identified by King Sturge's review (See section **Error! Reference source not found.**) of RBKC's property portfolio as one of three sites<sup>250</sup> which were incurring the greatest on-going cost to the Council and had the greatest potential for redevelopment.<sup>251</sup> King Sturge recommended the development of a Council Hub at Malton Road, adjacent to the location of the WIC on Ladbroke Grove, where the Council services located within WIC could be relocated. RBKC's Corporate Property department stated in recommending the release of the site from Council operations that the rental income obtained from WIC could be used to further the delivery of front-line services in the Borough.

Documents reviewed by Kroll showed that there had been an earlier proposition by Corporate Property to secure a major national retailer as a tenant for WIC, according to a report prepared by the Director of Corporate Property that was presented to RBKC Leader's Group in November 2012.<sup>252</sup> The same report stated that Lambert Smith Hampton ("LSH") were advising RBKC how they could generate the most rental income from the building - see Section 9.5.1. LSH's plan was to be implemented upon its completion in November 2012, according to the report.

RBKC instructed HNG in early 2015 to conduct an open marketing exercise and bidding process for WIC. Marketing material relating to WIC produced by HNG, on behalf of RBKC, stated a guide price for rental of GBP 37.50 per square foot and<sup>253</sup> listed three units as available:

- Unit 1: A retail unit or restaurant facing Ladbroke Grove;
- Unit 2: A retail unit or restaurant with access off Thorpe Close; and
- Unit 3: A self-contained first floor unit with private ground floor entrance, for B or D class use accessed off Thorpe Close.

The site was also listed as available in its entirety, with RBKC to be responsible for strip-out works and improving the exterior.

<sup>250</sup> The other sites were the EPICS (A Children's centre located in K&CC Hortensia Road) (outside the scope of the Independent Review) and the INC (See section 7)

<sup>251</sup> Exhibit 188, RBKC Leader's Group Draft Report Progress on Asset Review Programme, 11 October 2011

<sup>252</sup> Exhibit 40, RBKC Leader's Group Progress Report on the Asset Review Programme, 22 November 2015

<sup>253</sup> Exhibit 189, Westway Information Centre Property Particulars, 14 July 2014

RBKC instructed HNG to obtain best offers for the site by mid-August 2015.<sup>254</sup>

### 9.1.2 Refurbishments to WIC to increase the bid value

RBKC carried out refurbishments to WIC prior to and during the bidding process. Cabinet approved stripping out the building, at a cost of GBP 350,000, on 30 October 2014.<sup>255</sup> Improvements to the exterior of WIC (the elevations) were approved on 17 September 2015 by Cabinet, at a cost of GBP 792,000, although only GBP 700,000 of additional spending was required, due to an underspend of GBP 100,000 from the strip out works.<sup>256</sup> These refurbishments were initiated following advice from the Corporate Property Department which suggested that marketing WIC with a new exterior would result in the Council receiving a higher rental income than would otherwise be obtainable, according to the report which accompanied the decision to lease the site.

An October 2014 Report to Cabinet had estimated that the rental income available from WIC, without replacing the elevations, was GBP 331,250 per annum.<sup>257</sup> As of September 2015, when the elevation improvements were approved by RBKC Cabinet, the offers received for WIC included a proposal with a rental income of GBP 600,000 per annum. Corporate Property stated that the increased rental figure was due to RBKC including renovations to the elevations as part of their offer to bidders.

### 9.1.3 Change of planning permission to increase marketability

In order to market WIC for a wide range of uses, David Watney, a property consultant, submitted a request on 4 February 2014 on behalf of RBKC, to change the usage of the WIC.<sup>258</sup>

Planning applications are considered in the Planning Application Committee (“**PAC**”), which was made up of elected Councillors. WIC was initially a D1 facility, meaning it was a non-residential institution (used for social and community use). As set out in section 9.1.1, three separate units were marketed; in order to allow applications based on these three uses, RBKC applied to change the WIC usage to three units comprising Class A1 (shops and retail), A2 / A3 (restaurants and cafes), B1<sup>259</sup> or D1<sup>260</sup>

<sup>254</sup> Exhibit 190, RBKC Cabinet Confidential Part B Appendix Westway Information Centre and North Kensington Library Lease, 19 November 2016

<sup>255</sup> Exhibit 187, Executive Decision Report for the strip out of the WIC for re-letting, 30 October 2014, [weblink here](#)

<sup>256</sup> Exhibit 191, Executive Decision Report to carry out improvements to the elevations of the Westway Information Centre, 17 September 2015, [weblink here](#)

<sup>257</sup> Exhibit 192, RBKC Cabinet Decision Report Westway Information Centre elevations improvements, 17 September 2015

<sup>258</sup> Exhibit 193, Daniel Watney LLP Westway Information Centre Change of Use Planning Application, 3 February 2014, [weblink here](#)

<sup>259</sup> Being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit

<sup>260</sup> Non-residential institutions

on 6 October 2015.<sup>261</sup> The application acknowledged that WIC was classified as a social and community space meaning that Policy CK1, which intended to protect social and community spaces, of the December 2010 Core Strategy was relevant, although, as stated above, the main usage of the WIC was for internal Council use rather than for public or community use.<sup>262</sup>

RBKC's PAC approved the change of use on 6 October 2015. The decision stated that, viewed in isolation, the change of use could be viewed as breaching policy CK1 but that the rationale for contravening CK1 was that in some instances a "*more holistic approach may be necessary to take account of the particular circumstances or the Council's wider regeneration objectives*".<sup>263</sup> A Planning Support Officer advised that the loss of community and social use was acceptable as the use would be retained in the immediate area following the relocation of WIC to the New Malton Road Hub.<sup>264</sup>

The planning conclusion outlined the following rationales for the change of use:

- It was part of a wider consolidation programme for the delivery of social and community facilities within RBKC.
- Policy CK1 allowed for redevelopment of community and social spaces if it could be demonstrated that there was a greater benefit for the Borough resulting from the development, as well as new or improved social and community spaces being provided elsewhere in the borough.
- Cuts to public sector funding had reduced the government grant received by RBKC. This warranted a holistic consideration as to how public services are best delivered.

#### 9.1.4 The decision to award the lease to NHP

NHP was awarded the lease to WIC following an open marketing and bidding process carried out by HNG, as instructed by RBKC. The final two bidders were NHP and Second Home, a serviced office provider. RBKC approved NHP's proposal over Second Home's on the basis that NHP offered a longer term and higher rent.

<sup>261</sup> Exhibit 194, RBKC Planning Applications Committee Report 6 October 2015, [weblink here](#)

<sup>262</sup> See section 4.4.3 for details of CK1

<sup>263</sup> Exhibit 194, RBKC Planning Applications Committee Report 6 October 2015, [weblink here](#)

<sup>264</sup> Exhibit 193, Daniel Watney LLP Westway Information Centre Change of Use Planning Application, 3 February 2014, [weblink here](#)

### 9.1.5 Consideration of two main proposals

RBKC's Cabinet considered detailed proposals from Second Home and NHP. On 8 June 2015, Cllr Feilding-Mellen met with Rohan Silva, the founder of Second Home, following email correspondence initiated by Mr. Silva. Second Home submitted their proposal for WIC to HNG via email on 9 June 2015.<sup>265</sup> The proposal offered a fifteen-year lease at GBP 37.50 per square foot per annum, with an unstated rent-free period. The proposal also included rent reviews every five years with some limitations. As regards to works, Second Home proposed a contribution from RBKC of GBP 50 per square foot for Category A works, which constituted the exterior works set out in section 9.1.2. In email correspondence Corporate Property Officer Richard Egan highlighted that this required a capital payment of GBP 750,000 from RBKC. Second Home would, according to the proposal, pay for all Category B works. On 15 July 2015, in an email to Mr. Clark and Mr. Egan, Cllr Feilding-Mellen requested further details of the bids placed for the WIC and noted that Second Home's was "very competitive". Cllr Feilding-Mellen also expressed an opinion for how the site might be best used, stating "the more I think about it, the more I like the idea of one of these enterprise hubs located there... It would certainly make better use of the position/active frontage than a school."<sup>266</sup> In response, Mr. Clark stated in an email dated 16 July 2016 that the Council must seek best consideration.<sup>267</sup>

NHP was the highest bidder for WIC as of September 2015.<sup>268</sup> NHP's proposal included an annual rent of GBP 37.50 per square foot, totalling GBP 600,000 per annum.

Second Home submitted an increased offer on 8 October 2015, to GBP 40 per square foot per annum.

### 9.1.6 Comparison of proposals

As the two highest bidders for the site, NHP and Second Home were requested to submit a final offer for WIC by 23 October 2015, according to the Cabinet decision that approved the lease. The report prepared by Corporate Property that accompanied the decision to lease WIC recommended NHP.

The table below compares the two final proposals from NHP and Second Home and demonstrates that the offer from NHP was commercially a better arrangement. Both offers proposed to undertake fit-out works at their own expense in exchange for a rent-free period. In addition, both proposals were based on the replacement façade works being undertaken by the Council. However, Second Home's proposal

<sup>265</sup> Exhibit 195, Email from Mr. Rohan Silva, *Fwd: Westway Information Centre*, 12 October 2015

<sup>266</sup> Exhibit 196, Email from Cllr Rock Feilding-Mellen, *WIC*, 15 July 2015

<sup>267</sup> Exhibit 197, Email from Mr. Richard Egan, *RE: WIC*, 17 July 2015

<sup>268</sup> Exhibit 198, RBKC Cabinet Decision Report Westway Information Centre elevations improvements, 17 September 2015

included provisions for an alternative design for the elevations based on its requirement for their own 'brand' which would require a new planning application. This cost is covered by the rent-free period proposed.

<b>Basis of lease</b>	<b>NHP</b>	<b>Second Home</b>
Term of lease	25 years	15 years
Annual Rental	GBP 687,500	GBP 682,344
Rent free period	16 months	24 months
Value of rent-free period	GBP 916,667	GBP 1,364,688
Other terms	Offer includes the proposal to lease NKL at an above market rate. Sub-let of part of the ground floor space to a café. RBKC does works on the site.	Provision for an alternative design for the replacement façade works being undertaken by the Council. This is based on Second Home's 'brand' and would require a new planning application.
Total value of rental	GBP 17,187,500	GBP 10,235,160
<b>Total value of rental (15 year equivalent for comparison)</b>	<b>GBP 10,312,500</b>	<b>GBP 10,235,160</b>

Taking into account the rent-free period of 16 months for NHP and 24 months for Second Home, as well as the additional outlay required for the Council, the NHP proposal appears to have been the more financially favourable, by a factor of a total of GBP 525,361.33 over 15 years. Calculation of this amount is shown in the table below.

<b>Basis</b>	<b>NHP</b>	<b>Second Home</b>
Base value of the lease (15 year equivalent)	GBP 10,312,500	GBP 10,235,160
Value of lease (inc. rent free)	GBP 9,395,833.33	GBP 8,870,472.00
Initial spend required for works	(GBP 792,000)	(GBP 792,000)
<b>Net value of lease</b>	<b>GBP 8,603,833.33</b>	<b>GBP 8,078,472</b>
<b>Amount NHP lease is favourable</b>	<b>GBP 525,361.33</b>	

#### *Pret a Manger*

Pret a Manger opened a retail unit in the site of the former WIC on 6 February 2018, according to media reports.<sup>269</sup> NHP's proposal for WIC included sub-letting between 2,000 and 2,500 square feet within the building.<sup>270</sup> Pret's lease agreement was therefore with the School, not the Council. The report that accompanied the RBKC Cabinet decision to lease WIC stated that Pret had submitted a proposal for this space, as detailed above.

#### *Citizens Advice Bureau*

The Citizens Advice Bureau ("**CAB**") was an occupant of WIC. Kroll's review identified several instances of consideration given to CAB's relocation in RBKC documents about the leasing of WIC. According to the minutes of the Property Policy Board on 14 July 2011, RBKC engaged with representatives of CAB about their space requirements at that time.<sup>271</sup> The agenda stated that this discussion was with reference to CAB's temporary and long-term space needs, as well as to understand their requirements in greater detail. A report prepared by the Corporate Property Department, discussed at the 10 October 2013 Leader's Group meeting, stated that leasing WIC was subject to CAB being relocated to "*suitable alternative accommodation*"<sup>272</sup> RBKC's application to

<sup>269</sup> Exhibit 199, "Westway Information Centre site: Demonstrations as Pret A Manger and Notting Hill Prep School move onto site," MyLondon, 12 February 2018, [weblink here](#)

<sup>270</sup> Exhibit 200, RBKC Executive Decision Report North Kensington Library Lease, 19 November 2015

<sup>271</sup> Exhibit 201, Property Board minutes, 14 July 2011

<sup>272</sup> Exhibit 202, RBKC Corporate Property Report Update on Asset Review Programme, 10 October 2013

change the use of WIC, submitted on 4 February 2014, stated that CAB was to relocate to 2 Acklam Road, London, W10 5QZ, a road parallel to WIC, in January 2015.<sup>273</sup>

This relocation was initially meant to be temporary, according to Lawrence Wilson, Deputy CEO of Kensington & Chelsea CAB, in email correspondence to RBKC Deputy Leader Cllr Taylor-Smith in January 2018.<sup>274</sup> Within the same email, Lawrence said that there had been an informal agreement between RBKC and CAB that CAB would be offered space in the new purpose built library which was to replace the existing NKL. Given that the library plans were terminated, the CAB remained until recently in temporary accommodation.<sup>275</sup>

#### *Pepper Pot Club*

The change of use and lease of WIC did not affect the Pepper Pot Club, which has continued to operate at the premises as normal, according to a draft of the third edition of the Westway Newsletter, published in March 2014.<sup>276</sup>

<sup>273</sup> Exhibit 203, Letter from Daniel Watney LLP Draft, 8 September 2014

<sup>274</sup> Exhibit 204, Email from Head of Asset Management, *RE: 74 Golborne Road, North Kensington*, 8 February 2018

<sup>275</sup> As set out in section 8, the new library was, in the end, never actually built.

<sup>276</sup> Exhibit 52, RBKC Draft Westway Newsletter, 25 March 2014

## 9.2 Involvement of external advisors

RBKC engaged three external advisors during the decision-making process of this transaction: property advisors Lambert Smith Hampton, HNG, and Daniel Watney.

### 9.2.1 Lambert Smith Hampton

RBKC engaged Lambert Smith Hampton in May 2012, under a five-year framework agreement, with responsibilities for “*carrying out reviews of the portfolio and be a partner in the delivery of cost savings, efficiencies and new opportunities*”.<sup>277</sup> According to a Corporate Property report from November 2012, Lambert Smith Hampton carried out a feasibility study to advise the Council on they could achieve its aim of leasing the building for the WIC.

### 9.2.2 HNG

HNG is a London based property agency that also acts as a chartered surveyor.<sup>278</sup> RBKC instructed HNG to carry out an open marketing exercise and manage the bidding process for WIC. The date that HNG’s engagement for this site began is unclear.

### 9.2.3 Daniel Watney

Daniel Watney is a commercial and residential real estate consultancy.<sup>279</sup> RBKC engaged Daniel Watney to apply for change of use for WIC. Daniel Watney’s role in this application was criticised by local community groups, see section 9.3.3.

<sup>277</sup> <https://www.lsh.co.uk/explore/research-and-views/news/2012/05/royal-borough-of-kensington--and--chelsea-appoints-lsh-as-property-adviser>

<sup>278</sup> <http://www.hng.co.uk/>

<sup>279</sup> <https://danielwatney.co.uk/>



## 9.3 Public relations and community engagement

RBKC's communication with the public regarding this transaction took place through the Westway Newsletters, first published in November 2012. The Council did not carry out a specific public consultation process regarding WIC. Kroll understands that the rationale for this was that the WIC was an internal Council building, rather than a public facility like NKL. However, concerns were raised by local community groups about the change of use of WIC obtained by RBKC. The concerns were based on what was said to be a growing shortage of voluntary and community spaces in the borough, and the Council's willingness to ignore stated policies in order to further their commercial objectives.

### 9.3.1 RBKC communication with the public regarding the transaction

RBKC's first public communication regarding leasing WIC was contained within the first edition of the Westway Newsletter, published in November 2012.<sup>280</sup> The newsletter said that services housed within WIC could easily be rehoused, and that the site would be a "*great spot for commercial use*".

The Westway Newsletter was a local pamphlet initially prepared by RBKC's Head of Media and Communications. Eight issues of the Westway Newsletter have been published from November 2012 to March 2017, which provided updates on plans relating to the WIC and the works undertaken.

### 9.3.2 Change of use

Several community groups, including Grenfell Action and the Kensington Society, raised concerns with RBKC about the change of use of WIC.

Their concerns were primarily related to Policy CK1, an RBKC stated policy which seeks to protect community and voluntary spaces in the borough. The concerns raised included:

- RBKC did not demonstrate that there was no need for WIC as a community or voluntary space before deciding to change the use, as is required by CK1.
- The application for change of use did not provide for equivalent or better premises to replace the lost social and community space that the WIC provided to the Citizens Advice Bureau.
- That Daniel Watney, the external advisor engaged to submit the change of use of application, misrepresented Policy CK1 in the application.

<sup>280</sup> Exhibit 120, The Westway Newsletter Issue 1, 16 November 2012

The Cabinet Member for Housing, Property and Regeneration, Cllr Feilding-Mellen, defended the change of use in email correspondence with representatives of the local groups which had expressed concerns. Cllr Feilding-Mellen stated that only the space occupied by the Citizens Advice Bureau could be considered community space, and alternative space had been rented at Acklam Road for CAB to continue its provision of services. He added that *“it is very possible that we will end up letting more than 160sqm of the building as D1 space, thereby actually increasing the amount of community space available to local organisations benefitting local people within the very same premises.”*<sup>281</sup>

### 9.3.3 Opposition to change of lease

Protests at the site of WIC took place in February 2018 as NHP and Pret moved into the site.<sup>282</sup> Media reports state that protests were opposing a community asset being put into private hands. Representatives of NHP were quoted as saying that the school was part of the community and that it works together with other schools in the area.

<sup>281</sup> Exhibit 205, email from Rock Feilding-Mellen, RE: WIC, dated 22 September 2015.

<sup>282</sup> Exhibit 206, "Westway Information Centre site: Demonstrations as Pret A Manger and Notting Hill Prep School move onto site," MyLondon, 12 February 2018, [weblink here](#)

## 9.4 Conclusions

### 9.4.1 Propriety of Officers and governance

From documents reviewed by Kroll, it appears that Officers and Members conformed to RBKC's constitutional framework in their leasing of the WIC. RBKC sought out relevant internal and external advice at multiple stages in the process. The decision was discussed at the Property Policy Board and other relevant bodies. The decision was entered onto the publicly available Forward Plan before being approved by Cabinet. The Council was able to demonstrate that it had achieved best consideration for the lease of the site.

### 9.4.2 Alignment with strategy

The decision to lease WIC was aligned with RBKC's 2020 Corporate Property Strategy, which intended to release surplus operational sites to create income streams for the Council. The King Sturge review identified WIC as one of three sites which had the greatest potential for redevelopment. The review recommended the development of a new hub for Council staff at Malton Road, which was implemented. This rendered WIC to surplus to the Council's requirements.

Allegations that the decision to change the use of WIC was in contravention of policy CK1, which seeks to protect community and voluntary spaces in the borough, were acknowledged by the Planning Department, but the end conclusion was that the decision could be approved on the basis that a more "*holistic*" approach is often necessary when considering planning applications.

### 9.4.3 Consideration of options and rationale for decisions

Kroll's review found evidence that RBKC gave consideration to alternatives before awarding NHP the lease to WIC. The Council instructed HNG to conduct an open marketing exercise, alongside a competitive bidding process. Corporate Property narrowed the bids down to the two highest, NHP and Second Home. NHP submitted a higher offer with a longer-term benefit to the Council.

### 9.4.4 Response to specific allegations

The following section sets out Kroll's analysis of specific allegations received in relation to WIC, based on the documents reviewed and the conclusions reached above.

**Allegation 1 – Loss of community space in the Borough**

Grenfell Action Group and other community groups raised objections with the Council that the change of use of WIC contravened Policy CK1. They stated that the Policy contains loopholes which allow RBKC to approve any decision that suits its interest.<sup>283</sup>

**Kroll analysis**

Given that the building was predominantly used to house Council internal services, Kroll did not conclude that the actual loss to the community of the reallocation of this building was significant. The CAB was re-located to a facility on Acklam Road, a road adjacent to the WIC, and the Pepper Pot Club's service was not affected by the development and continues to operate from the site.

**Allegation 2 – Taxpayer subsidy provided to NHP**

In a blog post Grenfell Action Group alleged that the Council provided a subsidy to NHP in the form of the external renovations to WIC which were funded by RBKC as part of the lease agreement.<sup>284</sup>

The post also raised questions about the purported environmental and aesthetic benefits which were a component of RBKC's rationale for completing the works. Grenfell Action questioned why the works had not been carried out before.

**Kroll analysis**

RBKC committed to funding the external renovations prior to the decision to lease WIC to NHP. Documents reviewed by Kroll showed that the rationale was to enhance the rental return obtainable from the site on a long-term basis.

By accepting NHP's proposal over Second Home's, the Council obtained a rental income that was financially more favourable. NHP's rental offer was worth GBP 525,361.33 more than Second Home's over a comparable 15-year period.

<sup>283</sup> <https://grenfellactiongroup.wordpress.com/2015/10/13/westway-information-centre-rbkc-cashes-in-again/>

<sup>284</sup> <https://grenfellactiongroup.wordpress.com/2017/04/17/please-sir-can-we-have-some-more/>

## 10. The Kensington Centre purchase and lease-back

This section focusses on the 2016 acquisition and lease-back of the Kensington Centre, located on Wornington Road, London (the “Kensington Centre”), one of the sites of Kensington & Chelsea College (“K&CC”), a further and higher education college located in RBKC.

This transaction was selected for review due to significant public interest surrounding the transaction, with focus in particular on the following:

- That Tony Redpath, a Governor for K&CC was also RBKC’s Director of Strategy and Local Services for this period and that his involvement in the negotiations around the Kensington Centre constituted a conflict of interest;
- That the continuity of provision of adult education was not adequately considered by the Council;
- That the Council had breached its own local plan in order to justify the purchase of the site; and
- That the level of community engagement by RBKC was not satisfactory and that some Councillors were excluded from important conversations involving the potential acquisition.

### Decision making and timeline

The following section provides a high-level summary to the transaction. The events surrounding the transaction are referenced in detail from section 10.1 onwards.

K&CC began experiencing financial difficulties from September 2012 after a loss of a major contract. RBKC had demonstrated an interest in developing the Kensington Centre since September 2013 and preliminary discussions had been held between the principal of K&CC and the Council’s then Chief Executive Derek Myers.<sup>285</sup> In February 2014, Tony Redpath, the Director of Strategy and Local Services at RBKC was appointed as an external Governor of K&CC. The appointment was made at the request of K&CC Principal Mark Brickley, who wanted to strengthen the relationship between K&CC and RBKC. Discussions continued throughout 2014 and 2015 until RBKC submitted a formal proposal

<sup>285</sup> Exhibit 207, K&CC Kroll Report (p. 39)

in November 2015 for the sale and leaseback of the Kensington Centre.<sup>286</sup> Mr. Redpath stepped back from his role as a Governor of K&CC in February 2016, prior to the sale of the Kensington Centre.

Corporate Property produced a briefing paper for the Property Policy Board (“PPB”) in January 2016 which set out the proposed purchase and leaseback of the Kensington Centre. The transaction was further discussed at a PPB meeting on 18 February 2016, along with the presentation of an analysis of financial options. The proposed acquisition was first endorsed by the Leader’s Group in a meeting on 25 February 2016. Whilst there was no formal agreement or detailed plan in place at the time to secure additional facilities for K&CC after the expiry of the lease, agreements were drafted that would have provided K&CC with an option to lease another local facility to continue the provision of adult education as well as a short term lease at a Council-owned property next to K&CC’s other site on Carlyle Road, located in the south of the borough.

The Key Decision to recommend the acquisition of the Kensington Centre was entered onto the publicly available Forward Plan on 23 March 2016, in line with the constitutionally required number of days for a decision being taken on 20 April 2016.<sup>287</sup> RBKC’s Cabinet approved the acquisition of the Kensington Centre at a meeting on 20 April 2016. The Key Decision stated that RBKC intended to develop the Kensington Centre into a mixed-use site which would retain an educational space and additional accommodation, with the main goal to generate income for the Council. The acquisition was seen as key in helping RBKC fulfil its regeneration objectives in the north of the borough. The redeveloped accommodation units were also to be used as “*decant*” units for local regeneration projects as well as affordable housing.

A number of Labour ward Councillors complained that the Corporate Property Department failed to provide them with information on the proposal prior to the decision, which contributed to the feeling that “*the democratic process of scrutiny was [is] not being properly observed by this Council*”. Following a complaint from a Labour Councillor on these issues, an independent investigation completed by the Chief Solicitor of RBKC found that the Council’s internal procedures were not “*strictly adhered to*”, but that this did not constitute a breach of legislative or constitutional requirements.

The sale was completed on 19 July 2016 and included a three-year leaseback to K&CC. The leaseback was agreed to allow RBKC time to consider development options for the site and to obtain relevant

<sup>286</sup> Whilst discussions were held over 2014 and 2015 where RBKC had demonstrated an interest in acquiring the Kensington Centre, Kroll has been unable to verify the precise circumstances and events leading up to RBKC’s offer in November 2015 through the available email correspondence and interviews.

<sup>287</sup> The decision date was actually entered into the Forward Plan incorrectly as 21 April 2016.

planning permission. The leaseback period would also enable RBKC and K&CC to work together to identify a temporary facility in the north of the borough for K&CC while the Kensington Centre was being developed.

### **Internal consultation and scrutiny**

Documents reviewed by Kroll identified internal consultation from three RBKC departments before the proposed acquisition was put forward to Cabinet: Planning, Legal and Finance.

Concerns were raised by members of the Finance team about the timeliness of consultation and the lack of appropriate details provided by Corporate Property to usefully comment on the financial impact of the acquisition. The decision was taken to the Cabinet on 20 April 2016 without a clear understanding of the financial implications, including the source of funding for the acquisition. Prior to March 2016, the acquisition was not included in RBKC's Capital Programme, despite the fact that the Key Decision of 20 April 2016 stated that there may have been a requirement for external funding for the acquisition if the Capital Programme was delivered in full. At the time of the decision RBKC was therefore uncertain whether they would have required to borrow funds externally to finance the acquisition.

The Cabinet Member for Education and Libraries, Cllr Emma Will, also raised concerns about whether the site was to be retained for adult education, as this was not mentioned specifically in the PPB meetings. The Corporate Property Department provided reassurance that K&CC would have the option to lease other properties in the borough to maintain the provision of adult education during the development process.

Planning advice obtained by Corporate Property identified that the development of the Kensington Centre for predominantly residential purposes would breach a key policy in the Local Plan 2015 – which stated that social and community uses for the development of the Kensington Centre [should be] “*protected and enhanced*”. However, the Executive Director of Planning and Borough Development presented the argument that wider community benefits and the inclusion of a replacement D1 educational facility would provide benefits which would offset this breach.

Consultations with the RBKC Legal Department focussed on the legality of the transaction from the perspective of the Town and Country Planning Act and concluded that the economic benefit of the acquisition would constitute compliance with the regulations.

With regards to scrutiny, Officers assigned the decision to purchase and leaseback the Kensington Centre a 'one diamond' rating, despite the significant capital outlay and potential impact on the Golborne Ward and the wider community. The confidential minutes of the Housing and Property Scrutiny Committee meeting reflected a change in the diamond rating to three diamonds. The reason behind this was not documented in the minutes.

The transaction was discussed by the Housing and Property Scrutiny Committee on 11 May 2016, nearly three weeks after the Key Decision and the day before the exchange of contracts between RBKC and K&CC. Information about the Key Decision was sent to the Chair of the Committee, Cllr Quentin Marshall on 23 March 2016 but was not discussed until the May meeting. On the date of the Key Decision, Cllr Feilding-Mellen emailed Cllr Marshall asking whether he would be happy to review the decision "*after the fact*". Cllr Marshall responded that he was happy that it would be reviewed after implementation.

### **External advisors**

RBKC engaged two external parties to advise on specific aspects of the transaction: Commercial real estate advisors CBRE, to provide an analysis of available options for the development, the potential transaction structures and a 'red book' valuation of the site and Pinsent Masons LLP, a law firm, were appointed to negotiate the terms of the agreements between RBKC and K&CC and to comment on other legal questions, in particular to consider the possible timeline and implications of a judicial review surrounding the transaction.

Communications between CBRE and Corporate Property showed that CBRE had "*steered*" K&CC's commercial advisors away from an "*open market testing*" approach, which CBRE advisors concluded would have the impact of significantly increasing the purchase price for RBKC. According to information in the K&CC Kroll Report, RBKC also threatened to withdraw its bid if the sale price was tested on the open market.

CBRE also considered a number of options for development of the Kensington Centre, concluding that of the five options presented, the most beneficial to RBKC would be to enter into a structured deal with a Private Rental Sector ("**PRS**") developer by leasing the site to the PRS developer on a long leasehold. The PRS developer would then have responsibility for developing the property and could sell a number



of units to cover the development cost. The remaining units would then be sold as a PRS product, with a revenue split between the developer and RBKC. CBRE estimated that the capital receipt for this scenario could result in a capital receipt of GBP 41 million, which could directly benefit front-line services.

CBRE also prepared a valuation of the Kensington Centre in April 2016, concluding its value to be GBP 28.6 million. The value of the payment to K&CC was reduced to GBP 25.35 million to take into account the lease value for the initial three years of GBP 1.1 million per year.

Lambert Smith Hampton (“**LSH**”) was also the advisor to K&CC during the time of the transaction, upon the recommendation of RBKC since K&CC required professional advice. LSH had previously entered into a five-year framework agreement with RBKC in 2012 to provide strategic advice on the Council’s property portfolio. According to the K&CC Kroll Report, LSH confirmed to K&CC that members of staff involved in the transaction would not simultaneously act on any engagements with RBKC.

Kroll identified that LSH was instructed on 6 April 2016 by RBKC to prepare a Marketing Strategy Report in relation to a development at Chelsea Creek, which was completed on 14 April 2016, prior to RBKC and K&CC completing the transaction. Stephen Armitage from LSH stated in an interview with Kroll that the same members of staff were not involved in both engagements. Additionally, he stated the active involvement in the negotiation on behalf of K&CC had been completed on 15 March 2016, at which point the matter was passed onto solicitors and therefore there was no breach of the agreement with K&CC.

### **Public relations and community engagement**

As part of the negotiations surrounding the acquisition, RBKC and K&CC agreed to pursue a joint media strategy to announce the transaction. Documents reviewed by Kroll showed that K&CC delayed the release of a public statement announcing the transaction until 2 June 2016, over a month after the Cabinet decision had been made. Communications showed that RBKC representatives asserted pressure on K&CC to make a public statement, as this would be in their joint interest.

Local community groups questioned the Council regarding the sale of the Kensington Centre prior to any public announcement being made. For example, on 25 May 2016, Edward Daffarn emailed Cllr Feilding-Mellen about a “*nasty rumour*” which was circulating about the sale of the Kensington Centre. Cllr Feilding-Mellen provided a response to Mr. Daffarn on 3 June 2016 following an article in a local newspaper announcing the acquisition, sending a link to a local newspaper article which had reported on the acquisition.

On the Key Decision, the relevant ward where the Kensington Centre is situated was incorrectly listed as St. Charles, when in fact it was in Golborne Ward. Labour Councillors for Golborne Ward raised concerns that they had not been informed of the negotiations or recommendation in a complaint in May 2016. In its response, Corporate Property did not provide a reason as to why the Councillors were not informed prior to the decision being taken, stating that the misstatement was an error.

## 10.1 Rationale for the transaction and formal decision-making

### 10.1.1 Basis of the decision - RBKC

As set out in section **Error! Reference source not found.**, RBKC had committed to restructuring its commercial property portfolio through specific initiatives such as the Corporate Property Strategy 2020, with a particular focus on North Kensington, where the Kensington Centre was located. The K&CC Kroll report outlined that RBKC had historically shown an interest in acquiring the Kensington Centre from as early as June 2013, where it was recorded in confidential minutes of K&CC's Finance and General Purposes Committee. K&CC wanted RBKC's interest kept "*warm*" as long as the Council agreed to develop the site for educational purposes.<sup>288</sup>

In the Key Decision dated 20 April 2016, the Council stated its intention to create a mixed use development at the Kensington Centre, including a retained D1 (non-residential) space and a "*private rented sector development*" as well as affordable housing. The basis for this recommendation was threefold. Firstly, the sale and leaseback structure proposed provided K&CC with a significant capital receipt and certainty of occupation for the leaseback period between two and three years. Secondly, RBKC were able to develop affordable housing on the site that could be used for decanting purposes for surrounding regeneration projects. RBKC were undertaking significant regeneration projects in close proximity to the Kensington Centre, including the Barlby and Treverton estates, and the opportunity of decant housing in the area was considered a strategic benefit to the regeneration programmes. Thirdly, the opportunity for RBKC to pursue a PRS development meant they could generate significant revenue from the properties in conjunction with a developer in the long term which would fund front-line services.<sup>289</sup>

As part of the deal, K&CC would benefit from an option on a lease for a temporary facility to be established whilst the Kensington Centre was being developed, as well as alternative accommodation adjacent to their existing space in the Carlyle Building in a building owned by the Council.<sup>290</sup> K&CC would also have the option to lease the D1 space in the newly developed Kensington Centre once development was completed.

<sup>288</sup> Exhibit 207, K&CC Kroll Report (p. 38), [weblink here](#)

<sup>289</sup> Exhibit 208, Cabinet Decision Report, 20 April 2016, [weblink here](#)

<sup>290</sup> Exhibit 208, Cabinet Decision Report, 20 April 2016, [weblink here](#). The Chelsea Centre is K&CC's campus located on Hortensia Road, Fulham.

### 10.1.2 Basis of the decision – K&CC

The K&CC Kroll Report documented details of financial difficulties at K&CC resulting from the loss of a contract for educational provision for the Offender and Learning Skills Service in November 2012, which resulted in a 45% reduction in income between 2012 and 2013. Along with the loss of this contract, K&CC were negatively affected by funding cuts in the Further Education and Adult Education sectors in the years following the loss of this contract.

In addition to funding pressures, a review of the strategic direction of London Further Education Colleges took place in mid-2016, called the Central London Area Review. Each college was asked to provide a business plan to the GLA to be reviewed, and there was a risk that the GLA would freeze any asset management initiatives until the review was completed. The outcome of the review would have a significant impact on K&CC's future funding and made the completion of the transaction time sensitive from the perspective of K&CC.<sup>291</sup>

Bill Blythe, the Vice Principal for Finance and Resources at K&CC, sent a letter to LSH, K&CC's commercial advisors (see section 9.6.1) on 14 December 2015 which set out that RBKC had approached K&CC to raise the possibility of the Council acquiring the Kensington Centre as they needed land to build two new schools as part of their Barlby regeneration proposals.<sup>292</sup> The letter set out that the Kensington Centre would also provide decanting solutions for residents currently residing on the Estates.<sup>293</sup>

<sup>291</sup> The review was published in February 2017 and recommended that K&CC merge with the City Literary Institute, a college based in Holborn. The review states that the merged college "*will strengthen its operating surplus and cash reserves to move towards financial benchmarks*". Negotiations between the parties broke down in 2017.

See Exhibit 209, Central London Area Review Final Report 2017, [weblink here](#)

<sup>292</sup> Exhibit 207, K&CC Kroll Report (p.26), [weblink here](#)

<sup>293</sup> The email and document review did not identify any internal or external correspondence involving RBKC Officers prior to the transaction where the provision of two new schools being developed at the Kensington Centre were discussed.

## 10.2 Internal Consultation and Scrutiny

The Corporate Property Department requested advice from a number of relevant internal parties prior to the decision to acquire the Kensington Centre. Such advice was requested by a Corporate Property Development Manager from the Planning, Legal and Finance departments on 4 April 2016, only two days before the key decision and report needed to be finalised.<sup>294</sup>

The decision was subject to scrutiny from the Housing and Property Scrutiny Committee in May 2016. A summary of the communications between internal departments and scrutiny panels identified by Kroll is set out below.

### 10.2.1 Planning considerations

In the Local Plan (See Section **Error! Reference source not found.**), the Kensington Centre was explicitly stated to be a building not designated for redevelopment unless the plans were “*beneficial to the wider community and sufficient funding was identified*”.<sup>295</sup> Prior to the acquisition and proposed development, the building fell under D1, or community use.<sup>296</sup>

The Key Decision recommended that the Kensington Centre would be suitable for C3 residential accommodation and D1 use.<sup>297</sup> A review of the Local Plan and documents provided to Kroll has identified that a breach of the Local Plan was identified and considered in the process of recommending the acquisition of the Kensington Centre.

The D1 use of the Kensington Centre was protected under policy CK1 of the Local Plan, which stated that “*The Council will ensure that social and community uses are protected or enhanced through the Borough and will support the provision of new facilities*”.

Graham Stallwood, the Executive Director of Planning and Borough Development, provided comments on Corporate Property’s draft Cabinet paper for the Kensington Centre on 6 April 2016.<sup>298</sup> Mr. Stallwood acknowledged that the development of the Kensington Centre for predominantly residential purposes

<sup>294</sup> Exhibit 210, Email from the Development Manager, *Cabinet Paper – KCC Wornington Road*, 4 April 2016

<sup>295</sup> Exhibit 21, RBKC Consolidated Local Plan 2015, Section 21.2.8, [weblink here](#)

<sup>296</sup> D1 space, as outlined in the Town and Country Planning Act 1987, is for non-residential uses of property including “*the provision for education*”

See Exhibit 211, Town and Country Planning (Use Classes) Order 1987, Part A (D), [weblink here](#)

<sup>297</sup> C3 space, as outlined in TCPA 1987, is for dwelling houses (whether or not as a sole or main residence by a single person, a family or by not more than six residents living together as a single household

See Exhibit 211, Town and Country Planning (Use Classes) Order 1987, Part A (C), [weblink here](#)

<sup>298</sup> Exhibit 212, RBKC Cabinet Decision Report Draft Kensington and Chelsea College, 6 April 2016

would breach Policy CK1 of the Consolidated Local Plan 2015 as the development would not “*protect or enhance*” the Kensington Centre in its pre-existing D1 use as the space would be decreased.

Despite this breach, Mr. Stallwood argued that the wider community benefits of the development, such as investment in the Carlyle Building, the replacement D1 facility at the Kensington Centre and the “*crucial*” part the development would play in RBKC’s regeneration objectives, would offset such a breach.

### 10.2.2 Legal considerations

An internal Solicitor for RBKC provided details on the legal justification for the acquisition and development of the Kensington Centre to a Development Manager and Mr. Egan for the transaction on 5 April 2016.<sup>299</sup> The justification was requested by Corporate Property in order to defend against any future judicial review applications and prove that RBKC’s actions were in this case legal. The solicitor concluded that RBKC was legally permitted to acquire the land for planning purposes pursuant to Section 226 and 227 of the Town and Country Planning Act 1990 (“**TCPA1990**”). In order to purchase land that is likely to be used for development purposes, RBKC were required to achieve one or more of the following objectives:

- The promotion of improvement of the land and economic wellbeing of the area;
- The promotion or improvement of the social wellbeing of the area; or
- The promotion of improvement of the environmental wellbeing of the area.

The solicitor found that “*the economic wellbeing of the area will be improved as a result of the development as affordable housing tenants from other regeneration sites will be decanted into the development on this site which will be of a strategic benefit to the Council*”.

### 10.2.3 Financial considerations

The Finance department were required to provide sign off on the transaction from a tax and finance perspective, including an assessment of whether or not the transaction represented “*best consideration*” for the Council, as set out in Section 123 of the Local Government Act 1972. Kroll noted that concerns were identified in the Finance Department around the rushed nature of the transaction, which did not

<sup>299</sup> Exhibit 213, RBKC Legal Department Comments on *Wornington Road – Cabinet Paper 040416 Draft*, 5 April 2016

allow sufficient time for proper analysis as well as issues regarding potential tax implications and funding issues.

### *Timescale for financial analysis*

A Corporate Finance Manager, raised concerns about the lack of time provided to Finance to scrutinise the Cabinet paper in an email to the Town Clerk Nicholas Holgate on 5 April 2016, stating “*I am extremely concerned that Corporate Property are yet again springing a complex and expensive decision related to property on us at the last minute*”.<sup>300</sup> The wording “*yet again*” implies that from the perspective of the Corporate Finance team member, there was some concern that this was not the first instance that the Finance team had not had sufficient time to adequately opine on a transaction, although Kroll did not identify any further details of other such transactions referred to.

The Corporate Finance Manager also raised concerns about the potential legality of the transaction in an email to a Development Manager on 4 April stating, “*as I understand it local authorities cannot just acquire a site and redevelop for profit, but I could well be wrong*”.<sup>301</sup>

### *Tax considerations*

The Corporate Finance Manager also raised concerns about the tax implications of the transaction in this email, stating that Corporate Property needed to take tax advice urgently.<sup>302</sup> These concerns were qualified in the Manager’s response to Mr. Holgate the next day, saying the transaction was “*GBP 25 million of public spending without a clear objective (based on the draft wording attached which is all I have), without sight of any legal advice and without enough information to give tax and VAT advice.*”

Given the limited time provided to the Finance department for sign-off, Kevin Bartle, the Interim Director of Finance for RBKC, highlighted in communications to both the Development Manager responsible for the transaction and Mr. Egan on 7 April 2016 the time pressure that the Council was under to complete the transaction, and caveated any approval on the basis that adequate legal and tax advice be obtained – stating “*given the pressing timescale in which to complete this transaction, full legal and taxation advice has not been obtained before publication of this report, and as such, approval of the recommendation should be subject to satisfactory legal and taxation clearances*”.<sup>303</sup>

<sup>300</sup> Exhibit 214, Email from Corporate Finance Manager, *FW: Cabinet Paper – KCC Wornington Road PLEASE BE AWARE*, 5 April 2016

<sup>301</sup> Exhibit 215, Email from Mr. Nicholas Holgate, *RE: Cabinet Paper - KCC Wornington Road*, 5 April 2016

<sup>302</sup> Exhibit 216, Email from Corporate Finance Manager, *RE: Cabinet Paper – KCC Wornington Road*, 4 April 2016

<sup>303</sup> Exhibit 217, Email from Mr. Kevin Bartle, *RE: KCC Wornington Road – Cabinet Paper Draft*, 7 April 2016

Pinsent Masons, legal advisors to RBKC for this transaction (see section 10.3.3), provided clarification on tax issues raised on a phone call with Corporate Property on 7 April 2016.<sup>304</sup> The two main tax issues highlighted are summarised below.

- It was unclear how Stamp Duty Land Tax (SDLT) would be applied in the transaction, and what effect this might have on the purchase price. Pinsent Masons concluded that because the acquisition was a sale and leaseback, SDLT would be payable on the higher of the market value of the freehold required and the consideration paid.
- Questions were raised on whether RBKC would apply VAT on the leaseback of the Kensington Centre and the decant facility to K&CC. RBKC decided not to exercise an option to tax the Kensington Centre or decant facility, as K&CC would be unable to recover the VAT costs.

### *Funding considerations*

In addition to the tax questions noted, there were also concerns raised over funding of the payment for the capital outlay. Section 21.2.8 of the Local Plan states that “[in the Wornington Green area] *Several other buildings, such as the Kensington and Chelsea College, are also located within the site allocation but are not programmed for redevelopment unless this is beneficial to the wider community and sufficient funding is identified*”.<sup>305</sup>

It was recorded on the Key Decision on 20 April 2016 that RBKC may not be able to fund the development and may need to rely on external borrowing. The advice was that “*the funding for this GBP 25.6 million acquisition is additional to the Council’s latest (March 2016) three-year capital programme. If all the planned capital investment, including this proposal, actually takes place within the three-year period, the Council may need to undertake some external borrowing*”.<sup>306</sup>

Within the Finance Department, the funding of the transaction was highlighted as a potential concern by the Corporate Finance Manager in an email of 4 April 2016 to Mr. Bartle - “*this is GBP 25 million over more than one financial year capital investment, which is new to the capital programme and the first I have heard about it*”. Mr. Bartle later raised these points with Mr. Holgate, stating the transaction “*does not comply with your existing financial procedure rules*”.<sup>307</sup>

<sup>304</sup> Exhibit 218, Email from Ms. Laura Shott, RE: KCC – Wornington Road [PM-AD.FID2547986], 11 April 2016

<sup>305</sup> Exhibit 21, RBKC Consolidated Local Plan 2015, Section 21.2.8, [weblink here](#)

<sup>306</sup> Exhibit 208, Cabinet Decision Report, 20 April 2016, [weblink here](#)

<sup>307</sup> Exhibit 219, Email from Mr. Kevin Bartle, FW: Cabinet Paper – KCC Wornington Road, 5 April 2016



#### 10.2.4 Education Department considerations

No email correspondence has been identified which shows consultation between the Corporate Property Department and the Education Department, other than comments raised by Cllr Emma Will, the Cabinet Member for Education and Libraries, at the Leader’s Group meeting, which are detailed in the preceding sections.<sup>308</sup>

#### 10.2.5 Equality considerations

Kroll did not identify any reference being made to the equality implications of the decision to acquire the Kensington Centre in the public or exempt reports.

#### 10.2.6 The role of Tony Redpath – Director of Strategy and Local Services

As referenced previously, Tony Redpath, the Director of Strategy and Local Services, was appointed as a Governor of K&CC in February 2014. There were perceptions amongst certain community groups that the appointment could be seen to be at odds with the Constitutional requirements of impartiality of Officers, and the Officers’ code of conduct which states that “*Employees of the Council should not place themselves under any financial or other obligation to individuals or organisations such that might influence them or bias their actions in the performance of their official duties.*” While Kroll did not identify contemporaneous documentation which set out precisely the role of Mr. Redpath in the Transaction, documents did confirm that he was appointed a governor of K&CC (at the request of the college) and that the Development Manager responsible for the transaction and Mr. Egan requested his opinion on the Transaction in October 2015.

Mr. Redpath stated in interview that both RBKC and K&CC were aware of the potential perceived conflicts that his appointment as Governor would present, but that these conflicts were adequately identified and managed from the outset. According to Mr. Redpath, he was appointed due to his strategic knowledge of the borough gained through his position at RBKC and was mainly involved in discussions around increasing student numbers at K&CC. He stated that he recalled that he had attended one meeting of K&CC Governors well before negotiations started with RBKC where a range of options for the Kensington Centre were discussed, and that these options did not include disposal of the site to RBKC.

<sup>308</sup> See section 10.

Mr. Redpath recalled that Mr. Egan had verbally asked for his view on the possibility of RBKC acquiring the Kensington Centre. Mr. Redpath stated that he was surprised by the question and did not have much to contribute to Mr. Egan, which resulted in a follow up email from the Development Manager asking for Mr. Redpath's view. His response to the Manager's request was neutral in tone, stating that any transaction must bring mutual benefits for RBKC and K&CC. No other involvement in the transaction was identified by Kroll.

## 10.2.7 The Housing and Property Scrutiny Committee

The transaction was subjected to scrutiny by the Housing and Property Scrutiny Committee. The Review noted that scrutiny was subject to some delay and that as with the other transactions in the Review, the classification of the potential impact through the diamond rating system (as "one diamond") was questionable. Further details are set out below.

### *Timeliness of scrutiny*

The HPSC discussed the Kensington Centre acquisition at its meeting on 11 May 2016, nearly three weeks after Cabinet provided its approval and one day before contracts were exchanged between RBKC and K&CC. As the committee met approximately every two months, this was the closest scheduled meeting to the decision date. Emails reviewed show that information about the Key Decision, was sent to the Chairman of the Committee, Cllr Quentin Marshall on 23 March 2016 by the Principal Governance Manager at RBKC.<sup>309</sup>

Cllr Marshall responded via email to the information provided on the key decision requesting clarification about the commercial elements of the transaction, asking "*what amounts are involved? What's the financial case for the Council?*".<sup>310</sup> Responses were provided on 30 March 2016 by the Development Manager responsible for the transaction, via email, and the Executive Support and Governance Manager, via telephone.<sup>311</sup>

Cllr Feilding-Mellen emailed Cllr Marshall on the date of the Key Decision (20 April 2016) asking him to confirm that he was aware that the decision to purchase the Kensington Centre was going to Cabinet on the same day and that he "*hoped that you'll [Cllr Marshall] be happy for HPSC to review this [the*

<sup>309</sup> Exhibit 220, Email from the Executive Support and Governance Manager, *URGENT - PLEASE DO NOT IGNORE: Kensington and Chelsea College, Wornington Road, 24 March 2016*

<sup>310</sup> Exhibit 220, Email from the Executive Support and Governance Manager, *URGENT - PLEASE DO NOT IGNORE: Kensington and Chelsea College, Wornington Road, 24 March 2016*

<sup>311</sup> Exhibit 221, Email from the Development Manager, *RE: Kensington and Chelsea College, Wornington Road, 6 April 2016*

*decision] after the fact?]*". Cllr Marshall responded stating *"I've not seen the papers but am happy this is reviewed after implementation"*.<sup>312</sup>

#### Questionable "diamond" rating

As set out in section 5, all decisions which are entered onto RBKC's Forward Plan were assigned a rating to guide Members of the various scrutiny committees to identify key decisions of greater interest. The classification was then be approved by the relevant scrutiny committee Chairman, who had the authority to modify the rating before and after it is entered onto the Forward Plan.<sup>313</sup>

The recommendation of the purchase and leaseback of the Kensington Centre was entered onto the Forward Plan on 23 March 2016.<sup>314</sup> It is Kroll's understanding that the Officers responsible for the Transaction (Mr. Egan and others) assigned the decision a 'one diamond' rating. The appropriateness of this rating is questionable, given the significant capital expenditure in the project and its potential impact on the Golborne Ward and given that the diamond rating was later altered by Cllr Marshall, the HPSC Chair. In any case, the decision came before the HPSC *"because of the quantum"*, according to email correspondence from Cllr Marshall, and was subject to the scrutiny process. Cllr Marshall stated he *"[foresaw] no issues"* on the decision and recalled in interview that it felt like a standard property transaction where no objections were raised by Members of the committee.<sup>315</sup>

The confidential minutes of the HPSC meeting on 11 May 2016 state that *"the Chairman said that he had changed the Diamond rating of the KD to three diamonds and that is why it was before the Committee"*.<sup>316</sup>

A number of additional points of scrutiny were raised at the meeting itself:

- Councillor Eve Allison, a Conservative Member, asked what would happen to the staff and students of K&CC. Cllr Feilding-Mellen stated that K&CC had approached RBKC about the transaction and *"the Council was not forcing the College out"*.

<sup>312</sup> Exhibit 222, Email from Cllr Quentin Marshall, *RE: KCC Wornington Rd acquisition*, 20 April 2016

<sup>313</sup> Further information on the 'diamond' rating classifications is included at section 5.2.4.

<sup>314</sup> Exhibit 223, Email from Cllr Rock Cllr Feilding-Mellen, *RE: URGENT ATTENTION: Approval sought to place a new Cabinet Decision onto the Forward Plan: Kensington and Chelsea College, Wornington Road Cabinet 20 April 2016*, 17 March 2016

<sup>315</sup> Exhibit 224, Email from the Development Manager, *RE: Kensington and Chelsea College, Wornington Road*, 11 April 2016

<sup>316</sup> Exhibit 225, RBKC Housing and Property Scrutiny Committee Part B Minutes, 11 May 2016

- Councillor Monica Press, a Labour Member, asked whether RBKC could use the “CoCo”, a Council owned company set up to help tackle the shortage of housing, to build a new D1 facility and then all affordable housing units. Cllr Feilding-Mellen responded that no options had been ruled out but that there were restrictions on the CoCo for developing social housing.
- Councillor Press stated that the funding for the acquisition had been reviewed by the Financial Viability Working Group and noted the Council could access loans at public sector interest rates which could be match funded by RBKC.<sup>317</sup>

Although no HPSC Members represented the Golborne Ward where the Kensington Centre was situated, no further concerns were raised by Members at the time in relation to the transaction at the meeting.

<sup>317</sup> Exhibit 225, RBKC Housing and Property Scrutiny Committee Part B Minutes, 11 May 2016

## 10.3 Involvement of external advisors

RBKC engaged a number of advisors during negotiations with K&CC on the transaction. CBRE were instructed as commercial advisors for RBKC and provided an options analysis and valuation on the Kensington Centre as part of their scope. Pinsent Masons were instructed as RBKC's solicitors and assisted in drafting up the various agreements with K&CC. Lambert Smith Hampton, K&CC's advisors, held a close relationship with RBKC and worked with the Council on a number of other commercial matters but were not involved in this matter for RBKC.

A summary of the nature of the engagements has been included below.

### 10.3.1 CBRE

CBRE, an international commercial real estate advisory firm, was engaged by RBKC to act as a commercial advisor in negotiations surrounding the sale and leaseback of the Kensington Centre.<sup>318</sup>

#### Summary of work undertaken by CBRE and recommendations

From the review of the documents noted above and other communications between RBKC and CBRE, Kroll has identified the following in relation to the advice provided by CBRE:<sup>319</sup>

#### **Negotiations with K&CC advisors regarding market testing**

Communications between CBRE and Mr. Egan and a Development Manager identified that the company had “steered” K&CC's commercial real estate advisors, LSH, away from the open market testing approach.<sup>320</sup> An email in February 2016 from CBRE to Mr. Egan and the Development Manager stated that this “*demonstrate[ed] value add to you*”, as the testing would “*have inevitably increased pricing*”. According to communications between K&CC and LSH, RBKC had threatened to withdraw its interest in the Kensington Centre if the site's sale price was tested on the open market.<sup>321</sup> RBKC stated that they were unable to chase “beyond market value” into the speculative end of pricing and insisted that CBRE and LSH work together in order to confirm a base price.<sup>322</sup>

<sup>318</sup> Exhibit 226, RBKC Corporate Property and Kensington & Chelsea College Meeting Notes, 30 November 2015

<sup>319</sup> Kroll has not reviewed the terms of engagement of CBRE, but has summarised the deliverables of work from email communication

<sup>320</sup> Exhibit 227, Email from Mr. Alastair Perks, RE: *Wornington Road – General Update*, 23 February 2016

<sup>321</sup> Exhibit 207, K&CC Kroll report (p. 103)

<sup>322</sup> Exhibit 207, K&CC Kroll Report (p. 43)

Alastair Perks, a commercial advisor from CBRE, explained in interview that they were legitimate reasons for not pursuing the open market route for the transaction, summarised below:

- K&CC demonstrated a preference towards a sale and leaseback structure as this would provide them with security for their short-term occupancy and would raise capital.
- The medium-term leaseback period for the transaction of between two and three years would have been an unusual condition on the open market.
- K&CC and RBKC had an existing landlord and tenant relationship, which meant that certain rights would be assigned to RBKC as a “*special purchaser*”.
- A structure was agreed where a base price would be paid and any subsequent top-ups would be added in the event that the property became more valuable in the coming years, for example if any rights of light payments were required if buildings were demolished at 9-16 Edward Kennedy House and 192-193 Wornington Road.

CBRE recommended that K&CC take independent professional advice in its first email to RBKC on the project dated 20 November 2015, and this led to LSH being appointed by K&CC. On the possibility of open market testing, Mr. Perks confirmed in a communication with Kroll that “*open market testing can generate unreliable bids from untested bidders, who have not completed necessary due diligence at the time of bidding - and hence driving up the price artificially - while not being able to perform on the terms initially offered. Our advice therefore was to protect our client from this potential risk. The intention of this transaction at the outset and throughout was to pay a market price (as backed up by a Red Book Valuation), unlock mutual benefits for both organisations (that would not have been possible with another bidder), and to share upside equitably.*”

### **Consideration of options**

In February 2016, CBRE produced an “*Investment Strategy*” under the instruction of RBKC, which set out a number of scenarios for development of the Kensington Centre.<sup>323</sup> This report was presented to the Leader’s Group on 25 February 2016 and was ultimately included in a Cabinet Report where the decision to acquire the Kensington Centre was made. The four scenarios contained in the report were as follows:

<sup>323</sup> Exhibit 228, RBKC Investment Strategy (CBRE), 16 February 2016

- **Scenario 1** – A forced sale by RBKC at the end of the period of leaseback to a third party, assuming that vacant possession would be delivered.
- **Scenario 2** – Sale of the land at the end of the leaseback period, having secured residential planning consent during the period, to allow construction to start immediately.
- **Scenario 3(a)** - RBKC would develop a PRS (Private Rental Sector) development themselves (on the assumption of planning consent by the end of the leaseback) with a development manager overseeing the construction. RBKC would then receive 100% of the rental income.
- **Scenario 3(b)** - RBKC would enter into a structured deal with a PRS developer which would retain the ability to achieve vacant possession of the units. RBKC would effectively ‘gift’ the land to a private developer on a long leasehold, which would build the scheme and sell several units to cover the total build cost. The remaining units would then be sold as a PRS product where there would be a revenue split in rental return between the developer and RBKC. RBKC would also reserve the right at any time to sell individual units within the scheme.
- **Scenario 4** – RBKC would extend the lease with K&CC or secure another D1 tenant to lease the Kensington Centre in its existing condition.

The Cabinet decided that scenario 3(b) would result in the greatest benefit to RBKC. CBRE acknowledged that RBKC had used this method on similar sites. CBRE concluded the created rental stream and ability to take back the PRS units could generate a capital receipt of GBP 41 million. The capital receipt, according to the Key Decision documentation, would be used for “*front line services which will benefit the social and economic well-being of residents*”.<sup>324</sup>

### Red Book valuation

CBRE completed a ‘Red Book’ valuation of the Kensington Centre for acquisition purposes on 19 April 2016, the day before Cabinet made the key decision to acquire the Kensington Centre.<sup>325</sup> The result of the valuation was communicated to RBKC prior to the Cabinet meeting. The valuation report and appendices were formally sent to RBKC on 25 May 2016.<sup>326</sup> The valuation report referred to a development comprising of 113,679 sq. ft of residential accommodation and 31,520 sq. ft for a replacement D1 facility and valued the Kensington Centre at GBP 28,600,000.

<sup>324</sup> Exhibit 208, Cabinet Decision Report, 20 April 2016, [weblink here](#)

<sup>325</sup> A Red Book valuation is undertaken with reference to the Royal Institution of Chartered Surveyors Professional Standards which contains mandatory rules, best practice guidance and related commentary for all members.

<sup>326</sup> Exhibit 229, Email from Tom Fuller, *CBRE Valuation Report*, 25 May 2016

The purchase price was then reduced from GBP 28,650,000 to GBP 25,350,000, to account for the lease value of GBP 3,300,000 for three years (GBP 1,100,000 per annum). K&CC would not be required to make any cash payments for the lease for three years under this arrangement. The rental value amounted to a return of 5% per annum for the capital invested. CBRE set out the basis of the discount in their paper on the purchase price mechanics, stating “*on the day of the transaction, the Council could hypothetically pay out GBP 3,300,000 into a non-interest bearing account and draw down against this sum over the period of the leaseback, in lieu of actually receiving a rental stream from K&CC directly*”.<sup>327</sup>

#### Valuation differences between CBRE and K&CC advisors

The K&CC Kroll report into the sale and leaseback for K&CC identified that LSH, the commercial advisors for K&CC, produced a report in August 2015 that valued the Kensington Centre at GBP 35,585,000 in accordance with ‘Red Book’ standards based on the “*continued viability for its occupation and use for the provision of services it provides*”. According to this report, K&CC’s management also felt that development of a mixed-use site would likely increase the value further.<sup>328</sup>

Despite this valuation in August 2015, following the agreed sale, LSH concluded in communications with K&CC that the agreed purchase price (GBP 28.6 million) had “*exceeded market value*”. The rationale for this was that the purchase price would not be achievable on the open market as “*the high purchase price would result in a very small number of investors/developers being in a position to offer the site thereby reducing competitive tension*” – in addition, the leaseback option would also not be available on the open market.<sup>329</sup>

It appears from the documentation reviewed that, despite the possibility of a higher monetary valuation being potentially achievable, as stated by both CBRE<sup>330</sup> and LSH, the deal which was achieved was considered the best option for both K&CC and RBKC according to their respective commercial advisors.

Stephen Armitage, Director of Planning Development and Regeneration for LSH commented on the valuation differences in interview. Mr. Armitage stated that there was a significant difference in the valuations as the former was completed on a continued use basis. LSH were also unaware during the

<sup>327</sup> Exhibit 230, CBRE Wornington Road Purchase Price Mechanics Draft, 31 March 2016

<sup>328</sup> In an email dated 7 December 2015 to Barclays Bank (K&CC’s Bankers), Mr. Blythe set out that “*the site is valued (Current Use) at over GBP 35m – this is clearly a lot less than can be achieved for residential plus residual replacement D1*”. See Exhibit 207, K&CC Kroll Report (p. 25)

<sup>329</sup> Exhibit 207, K&CC Kroll Report (p. 105)

<sup>330</sup> In communications, CBRE stated that market testing could lead to an increased purchase price for the Kensington Centre.



August 2015 valuation of the necessary repairs required to the Kensington Centre, which decreased the valuation further.

### 10.3.2 Lambert Smith Hampton

Kroll understands that LSH was engaged in May 2012 by RBKC under a five-year framework agreement, with responsibilities for “*carrying out reviews of their property portfolio and be a partner in the delivery of cost savings, efficiencies and new opportunities*”.<sup>331</sup> It was confirmed in interview that the agreement was set up between the Council and other property consultancies. The agreement enabled RBKC, at their discretion, to request services at pre-agreed terms and conditions.

LSHH was also engaged in July 2015 and January 2016 by K&CC, and in the latter on the other side of the Kensington Centre transaction. The main contact for RBKC at LSH, Stephen Armitage, Director of Planning Development and Regeneration, was also the individual who handled the transaction on behalf of K&CC.

Mr. Armitage raised the risk of conflict of interest via letter with K&CC prior to their engagement in December 2015. The letter stated that the risk was mitigated by LSH’s internal procedures and that “*the members of staff who are involved in this transaction will not simultaneously deal with any case on behalf of RBKC*”.<sup>332</sup>

LSH has provided Kroll with further information relating to three relevant engagements connected to Chelsea Creek, a luxury riverside development, that occurred between December 2015 and April 2016, during the course of negotiations on the Kensington Centre. Firstly, a Disposal Strategy Proposal was sent to RBKC in January 2016 in connection with the marketing of the Council’s interest, which was limited to a freehold interest of the Creek rather than the surrounding development. No acknowledgement or subsequent instruction from RBKC has been obtained as part of the review in relation to this matter.

<sup>331</sup> Exhibit 231, LSH Announcement of appointment as Property Adviser to RBKC, 10 May 2012, [weblink here](#)

<sup>332</sup> Exhibit 207, K&CC Kroll Report (p. 101)

Secondly, LSH appointed a third party, New Maritime Ltd, on behalf of RBKC between February and May 2016 to provide advice on drainage rights. LSH confirmed that they did not comment on the advice provided by New Maritime and instead provided an administrative role.

Thirdly, a Marketing Strategy Report was requested by RBKC on 6 April 2016 and subsequently issued on 14 April 2016. LSH have been unable to identify any further instructions in relation to the Marketing Strategy Report following its issue.

Whilst the Marketing Strategy Report was completed prior to the Cabinet recommending the sale and leaseback transaction, LSH have stated that their involvement in negotiations for the Kensington Centre was completed on 15 March 2016, at which point the matter was passed to solicitors. Subsequently, on 3 May 2016, LSH provided K&CC with a "Sale Certification" document which outlined the basis for how the proposed terms of the Kensington Centre sale exceeded market value.

### 10.3.3 Pinsent Masons

Pinsent Masons, an international law firm, were engaged by RBKC in February 2016 to negotiate the terms of several agreements connected to the acquisition and leaseback of the Kensington Centre to K&CC. As noted in the preceding sections, Pinsent Masons provided advice on the tax implications of the transaction. In addition, the firm were also involved in advising in relation to the possibility of judicial review relating to the transaction. Further details are set out in the following section.

#### Analysis of legal basis for judicial review.

RBKC was first made aware of K&CC's concerns about the potential for judicial review<sup>333</sup> on 11 April 2016, nine days before the decision to acquire the Kensington Centre would be subject to Cabinet approval.<sup>334</sup> K&CC were concerned that the transaction could be challenged by a third party and therefore be subject to additional legal scrutiny. Judicial review would incur further legal costs and have the potential to overturn the sale of the Kensington Centre, which would affect K&CC's financial future as they were dependent on the funds from the sale to continue operating. RBKC instructed Pinsent Masons to review the limitation period applied to judicial review applications.

RBKC and K&CC agreed that Pinsent Masons would seek advice from Counsel on the issue, and instructions were provided to a QC on 28 April 2016. The briefing paper stated that RBKC wanted to

<sup>333</sup> Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

<sup>334</sup> Exhibit 232, Email from Ms. Laura Shott, *Wornington Road [PM-AC.FID2547986]*, 11 April 2016

await the lapse of the judicial review period before proceeding with the transaction.<sup>335</sup> The QC provided his opinion on 5 May 2016, which found that the limitation period ought to be 12 weeks from the date of the Key Decision.<sup>336</sup> Pinsent Masons summarized Counsel’s opinion as follows and outlined the recommended steps if a judicial review claim was brought.<sup>337</sup>

*“The completion date for the purchase of the Kensington Centre will therefore be three working days after the end of this 12-week period, provided that no application has been made. If a judicial review application is made within this period, RBKC will use reasonable endeavours to defend the application for three months. At the end of this three-month period (being 14 October 2016), if the claim still remains valid, either party will have the right to rescind the Purchase Agreement and RBKC would be responsible for K&CC’s legal and surveying costs”.*

Mills & Reeve, K&CC’s solicitors, inserted a clause into the sale agreement on 12 May 2016 (the day the contracts were exchanged) that included a reference to the judicial review period. Specifically, they wanted *“an obligation not to anything which may make a JR application more likely, including not to make any public announcements about the contract”*.<sup>338</sup>

<sup>335</sup> Exhibit 233, RBKC Brief to QC to advise on Wornington Centre, 28 April 2016

<sup>336</sup> Exhibit 234, QC Opinion on Wornington Road Acquisition, 5 May 2016

<sup>337</sup> Exhibit 235, Pinsent Masons Report on Wornington Road Acquisition, 10 May 2016

<sup>338</sup> Exhibit 236, Email from Mr. Michael Reid, RE: *Wornington Road: Final Transaction Report [PM-AC.FID2547986]*, 12 May 2016

## 10.4 Public relations and community engagement

### 10.4.1 Delay of press release

Representatives of RBKC and K&CC agreed, during negotiations, that there would be a joint media strategy to announce the eventual sale and leaseback of the Kensington Centre. Kroll's review of email correspondence has identified that K&CC delayed the release of a public statement on the acquisition, particularly given the concerns around possible judicial review. The Review of communications identified repeated efforts from within RBKC to make a public announcement.

Representatives of K&CC set out in email correspondence in January 2016 that they were aware that discussions with RBKC on the acquisition of the Kensington Centre would need to be publicised. K&CC requested that the commercial terms of the deal be agreed prior to the announcement, and that K&CC be advised when the transaction would go 'public' so that they could manage communications.<sup>339</sup>

Communications between K&CC and RBKC showed that there was a plan to formally announce the acquisition after the decision was placed onto the Forward Plan in March 2016.<sup>340</sup> After the Development Manager raised the possibility of a statement, Mr. Blythe, the Vice Principal for Finance and Resources at K&CC, agreed that "*it may be sensible for us to share it [the acquisition] with that community on that day [entry onto the Forward Plan]*". Although the Forward Plan is a publicly available document, no statement to the press was released by either party despite the agreement.

After the Key Decision had been passed by RBKC, the media department at the Council drafted a press statement to be released on 5 May 2016. Mr. Blythe rejected the request to announce the acquisition on 3 May 2016, since K&CC Governors had not provided approval on the transaction and commercial terms had not been agreed. Mr. Blythe stated in email correspondence that: "*It can't go out currently – the most contentious thing is that our Corporation Board have yet to approve the decision to sell – this may happen tomorrow. It is therefore entirely inappropriate to issue until the sale has been approved*".<sup>341</sup>

<sup>339</sup> Exhibit 237, Email from Mr. Alastair Perks, *RE: Wornington Road – Base Pricing Methodology*, 25 January 2016

<sup>340</sup> Exhibit 238, Email from Mr. Bill Blythe, *RE: KCC – Wornington Road*, 16 March 2016.

<sup>341</sup> Exhibit 239, Email from Mr. Bill Blythe, *URGENT RE: Acquisition of the Wornington Road site – draft press release*, 3 May 2016

On 11 May 2016, Mr. Egan stated in an email to a Media and Communications Officer at RBKC, following discussions with K&CC, that they “*would prefer the release to go out upon completion*”<sup>342</sup> given their concerns of a potential judicial review enquiry.

The Media and Communications Officer raised concerns about the further delay, setting out that his “*own concern about prolonged delay is that those who might want to be critical, or accuse the Council of being secretive, could point to the lack of the public statement following a decision to buy an expensive plot of land*”.<sup>343</sup>

Edward Daffarn from Grenfell Action Group first raised concerns about the sale of the Kensington Centre on 25 May 2016. This was a month after the Cabinet report setting out the reasons for the decision had been made publicly available, but before any public statement had been released by RBKC or K&CC. Mr. Daffarn emailed Cllr Feilding-Mellen setting out that there was “*a very nasty rumour circulating in North Kensington that the RBKC have sold the Adult Education College in Wornington Road*”.<sup>344</sup>

Communications reviewed by Kroll showed that Mr. Daffarn’s enquiry resulted in RBKC asserting more pressure on K&CC to approve a press release. RBKC’s Head of Communications and Media stated in an email to Mr. Blythe that since Mr. Daffarn had knowledge of the acquisition it was time for both parties to “*[in our joint interest] try and proactively explain ourselves*”.<sup>345</sup> Consequently, an announcement was published in the local publication *Get West London* on 2 June 2016 which included comments from Cllr Feilding-Mellen and Mr. Brickley, the K&CC Principal.<sup>346</sup> The acquisition was also publicised in the June 2016 edition of the *Westway Newsletter*.<sup>347</sup>

On 3 June 2016, Cllr Feilding-Mellen provided a response to Mr. Daffarn by sending him the *Get West London* article announcing the acquisition.<sup>348</sup>

<sup>342</sup> Exhibit 240, Email from Media and Communications Officer, *RE: Press Release – KCC*, 11 May 2016

<sup>343</sup> Exhibit 240, Email from Media and Communications Officer, *RE: Press Release – KCC*, 11 May 2016

<sup>344</sup> Exhibit 241, Email from Cllr Rock Cllr Feilding-Mellen, *RE: K and C Adult Education College in Wornington Road*, 3 June 2016

<sup>345</sup> Exhibit 242, Email from Mr. Bill Blythe, *RE: K and C Adult Education College in Wornington Road*, 25 May 2016

<sup>346</sup> Exhibit 243, “*New homes and Kensington and Chelsea college’s future secured after GBP 25m deal struck*,” *MyLondon*, 2 June 2016, [weblink here](#)

<sup>347</sup> Exhibit 244 *Westway Newsletter* (Seventh Edition), June 2016 [Weblink here](#)

<sup>348</sup> Exhibit 245, Email from Cllr Rock Cllr Feilding-Mellen, *RE: K and C Adult Education College in Wornington Road*, 3 June 2016

## 10.4.2 Lack of consultation with stakeholders

Consultation with local community stakeholders or ward Councillors on the proposed transaction did not occur prior to the Key Decision on 20 April 2016. It was noted in the key decision that “*discussions with the Local Planning Authority and/or local community stakeholders have not yet commenced*” as at April 2016.

### **Golborne Ward Councillors**

The Kensington Centre is situated in the Golborne Ward although allocated Ward on the Key Decision was incorrectly stated as being St Charles. The GLA published a study in March 2012 that stated Golborne was the joint poorest Ward in London on an extent measure, meaning the “*depth of deprivation in the Ward was more widespread than anywhere else in the Capital*”.<sup>349</sup> At the time, the Ward Councillors were Cllr Emma Dent Coad, Cllr Pat Mason and Cllr Bevan Powell, all of whom represented Labour. According to communications from opposition Cllr Judith Blakeman, none of the relevant ward Councillors received details of the KD before it went to Cabinet. Cllr Blakeman raised these concerns in an email to Mr Holgate in May 2016, stating that “*the report was not and has not been sent to the ward Councillors, although ward Councillors are supposed to be included in reports on matters concerning their ward. [Two ward Councillors received it solely because of their membership of the Cabinet and Corporate Scrutiny Committee]*”.<sup>350</sup>

In response to Cllr Blakeman’s comments, Mr. Egan admitted that the failure to involve ward Councillors was an oversight by Corporate Property, saying “*It is fair that Ward Cllr’s could expect to be consulted as part of the wider process and be asked for their comments on any paper, which it appears did not happen, CP is at fault in this regard*”. In this communication, Corporate Property did not provide an explanation of why ward Councillors were not notified prior to the Key Decision, other than the incorrect ward allocation of St Charles.

### **Local Community Groups**

Kroll has not identified any correspondence that suggests any consideration was given to consultation with local community stakeholders during negotiations with K&CC by Corporate Property.

<sup>349</sup> Exhibit 246, Email from Media and Communications Officer, *Press Coverage in Local Paper*, 13 March 2012

<sup>350</sup> Exhibit 247, Email from Mr. Richard Egan, *RE: Disregard of Scrutiny Concerns and Duties*, 23 May 2016

## 10.5 Conclusions

The review of documentation relating to the Kensington Centre identified general compliance with requirements of the Constitution and general principles and procedures of the Council, including the discussion of the transaction at the Policy Property Board, the Leader's Group, and the inclusion of the decision on the Forward Plan with the appropriate notice period. Internal consultation was also obtained, particularly to verify alignment with the Local Plan from Planning and from Finance regarding the funding and tax implications of the transaction. External advisors were also brought in to provide clarity over the various options open to the Council. The sale and leaseback option planned for the continuation of adult educational services.

With respect to decision making and consultation, the main shortcoming which has emerged from the review relates to the provision of materials by Officers in a timely way to relevant Councillors and scrutiny committees. The review of this transaction identified a number of areas where, although the requirements of the constitution were technically met, the timing and the extent of consultation and scrutiny raised some questions. Particularly, the Housing and Property Scrutiny Committee did not meet prior to the Key Decision being taken, and the Key Decision was approved prior to the detailed review of the relevant papers around the transaction. Members of the Finance Department also raised concerns about the length of time available to adequately scrutinise the details of the transaction.

With regards to the potential conflict of interest of Mr. Redpath being involved in the decision-making process while simultaneously representing the Council's interests, Kroll did not identify any evidence of personal or professional bias towards the Council's interests.

### 10.5.1 Alignment with strategy

The acquisition of the Kensington Centre was not specifically planned or part of a defined strategy for RBKC, although the rationale for the decision to pursue the transaction was aligned with the strategic objective of using space more efficiently, through reducing the educational space and developing the remainder to generate revenue. The Executive Decision Report stated that the acquisition of the Kensington Centre would help the Council in achieving its policy goals of regenerating the North Kensington area, as well as the generation of future revenues. The residential units on the newly developed Kensington Centre would be used for “*decanting*” for strategic regeneration opportunities in

the North Kensington area.<sup>351</sup> The acquisition did not form part of the Corporate Property Strategy 2020, but did reason that the future revenues generated from the housing units would help fund front-line services.

### 10.5.2 Decision making and scrutiny

The rationale provided in the Key Decision set out the following benefits for the Council:

- The ability to pursue development of the site where the Council would retain the ability to achieve/call for vacant possession of the residential units, which would create significant income for the Council.
- The Kensington Centre would provide strategic decant opportunities for regeneration opportunities in the North Kensington area.
- The sale and leaseback structure meant the Council had financial certainty for the period of the leaseback and the opportunity to consider what development scheme would be undertaken.

An options appraisal undertaken by CBRE recommended that a structured transaction with a private developer would generate the largest capital receipt for the Council, which could be used to fund front line services. A summary of the options appraisal was included in the Key Decision, which was subsequently approved by Members. The sale and leaseback structure was first proposed in email correspondence to K&CC in November 2015.

The Independent Review noted that there was consultation internally, in the PPB, the Leader's Group and that the proposed decision was placed on the Forward Plan appropriately. Advice was sought from internal teams including Planning and Finance, as well as from external advisors.

### 10.5.3 Response to specific allegations

#### **Allegation 1 – alleged conflict of interest – Tony Redpath:**

Mr. Redpath served as a Governor for K&CC between March 2014 and July 2018. He was also RBKC's Director of Strategy and Local Services during this period. Grenfell Action raised a concern in an email

<sup>351</sup> Decanting is a process where residents are required to move from their homes where properties are in need on major repair works or redevelopment.



to Nicholas Holgate, Town Clerk of RBKC, on 13 January 2017, that Mr. Redpath had helped RBKC secure the purchase of the Kensington Centre.<sup>352</sup>

### **Kroll analysis**

Although Mr. Redpath stepped down from his position as Governor in February 2016 and therefore did not vote on whether K&CC should sell the Kensington Centre to RBKC, he was a governor in late 2015 when discussions commenced and when RBKC submitted their original proposal on 10 November 2015, which therefore led to a perceived conflict of interest.<sup>353</sup>

It should be noted that Mr. Redpath was appointed as a Governor at the request of K&CC, who requested an RBKC Officer as part of the Governor body in February 2014 because they wanted “*to develop a greater strategic partnership with the Royal Borough and to work closely with the Royal Borough to achieve both College and Royal Borough objectives*”.<sup>354</sup>

Officers at RBKC are required to follow a Code of Conduct set out in the Constitution. Mr. Redpath was obligated to provide impartial advice to Councillors and fellow employees and not take any outside position that would conflict with RBKC’s interests.

Mr. Redpath provided his thoughts on RBKC working with K&CC on the Kensington Centre development on 13 October 2015, where he stated that “*any collaboration would need to have demonstrable benefits in terms of the Council’s financial or policy objectives*”.<sup>355</sup> His response to the Development Manager and Mr. Egan’s request was consistent with the requirement of Officers as set out in the Constitution.

Kroll did not identify any other factors which indicated any personal or professional incentive to influence the transaction, nor any indications that Mr. Redpath had had any conflict of interest with regards to the transaction. Mr. Redpath stated that he would not have voted on any potential resolution to sell the Kensington Centre to RBKC due to the perceived conflict of interest.

### **Allegation 2 - Retention of Adult Educational service provision**

<sup>352</sup> Exhibit 248, Email from Mr. Edward Daffarn, *RE: Complaint regarding RBKC and K and C College*, 13 January 2017

<sup>353</sup> Mr. Redpath left his role due to his involvement in the London Area Review, which determined funding for certain educational institutions in London. K&CC’s funding was being reviewed as part of the exercise.

<sup>354</sup> Exhibit 249, Email from Mr. Mark Brickley, *Greetings*, 27 January 2014

<sup>355</sup> Exhibit 250, Email from Mr. Tony Redpath, *RE: KCC Building*, 16 October 2015

Grenfell Action published a blog post on 12 June 2016 which raised concerns that RBKC were intending on relocating the adult education provision from Wornington Road to K&CC's campus on Hortensia Road, Chelsea whilst retaining "token" provisions for younger students at the Kensington Centre.<sup>356</sup>

**Kroll Response:**

As part of the transaction, K&CC would retain the right to use the Kensington Centre site for a period of three years and would have first right to occupy the D1 space following the redevelopment of the site. As part of the agreement, a temporary facility would also be identified and leased to K&CC during the development period near to the Kensington Centre in order to minimise the impact on adult education provision in the area. Kroll's analysis did not identify any evidence that RBKC attempted to influence the type and extent of service that would be offered by K&CC at the Kensington Centre, replacement facilities or newly developed D1 space.

Additionally, the College was in financial difficulty and the acquisition and lease back provided a lifeline of funding to allow the College to continue with its educational provisions.

Kroll's analysis additionally identified that consideration was given to the provision of educational services by the Leader's Group prior to the finalisation of the transaction. The Leader's Group recommended the transaction on the condition that Corporate Property consider the adult education provision in the north of the borough, following their meeting in February 2016.

While the size of the newly re-developed Kensington Centre would likely have had a smaller educational space, the CBRE report notes that the building was underutilised with "*less than 50% in regular use*".<sup>357</sup>

**Allegation 3 - Breach of Local Plan**

Grenfell Action's blog post on 12 June 2016 stated that RBKC breached the Local Plan in order to justify the purchase of the site, by not safeguarding the best interest of the community. Whilst the blog did not reference any particular objectives that were broken, the author suggests that the Local Plan is written in such a way to provide loopholes and extenuating factors that would provide RBKC with ample reasoning if they sought to take a decision that would contravene the Local Plan.

<sup>356</sup> Exhibit 251, "Wornington College Threat Confirmed," *Grenfell Action Group*, 12 June 2016, [weblink here](#)

<sup>357</sup> Exhibit 229, Email from Mr. Tom Fuller, *CBRE Valuation Report*, 25 May 2016

The blog states the following: *“When faced with advice from their own legal team that goes against their ambitions and informs them [RBKC] that what they are planning is in breach of their stated policy, the typical reaction from this Council of Mafiosi is not to back down and respect the limits they themselves have set to safeguard the best interests of their constituents, but to do the exact opposite. Instead they invariably contrive, with the collusion of the same advisors, to exploit the most tenuous of loopholes and perform whatever tricks and contortions they can to bypass the problems posed to them by the policies in question, thus denying the public the protections supposedly guaranteed by those policies”*.<sup>358</sup>

**Kroll Response:**

The Consolidated Local Plan was established in July 2015 and set RBKC’s policies towards the Borough’s physical environment and regeneration in certain areas like North Kensington. Officers at RBKC acknowledged internally that there was a breach of policy CK1 in its acquisition of the Kensington Centre, and this was set out in the Key Decision. The policy stated that *“the Council will ensure that social and community uses are protected or enhanced through the Borough and will support the provision of new facilities”*. Graham Stallwood, the Executive Director of Planning and Borough Development, argued that the wider community benefits of the development, such as the *“crucial”* role the new accommodation would play in RBKC achieving its regeneration objectives, would offset against such a breach.

The Local Plan explicitly states that certain buildings *“such as Kensington and Chelsea College”* in North Kensington could not be redeveloped without benefits to the wider community and only if sufficient funding was available. Communication involving members of the Finance team at RBKC identified potential gaps in the planning of funding options relating to the acquisition of K&CC - that if all planned capital investment took place RBKC would need to undertake external borrowing to fund the transaction, and therefore sufficient funding was not guaranteed. The funding plan for the acquisition of the Kensington Centre was also considered irregular by Kevin Bartle, Director of Finance, who said the plan *“does not comply with the existing financial procedure rules”*. Both planning and financial caveats were referred to in the Cabinet report.

<sup>358</sup> Exhibit 251, "Wornington College Threat Confirmed," *Grenfell Action Group*, 12 June 2016, [weblink here](#)

**Allegation 4 - Lack of community engagement**

Allegations were made that the level of community engagement by RBKC was not satisfactory and that some Councillors were excluded from important conversations involving the potential acquisition.

The lack of consultation concerned local stakeholders, including Labour Councillors, who were not told about discussions until after the report containing the Officer recommendations had been approved by the Cabinet.

**Kroll analysis**

It was noted in the Cabinet Decision Report in April 2016 that “*discussions with the Local Planning Authority and/or local community stakeholders have not yet commenced*” at the time RBKC agreed to purchase the freehold.

Kroll did not identify any substantial consideration about whether consultation with local community stakeholders ought to have taken place prior to the Key Decision. This was likely due to the commercial sensitivities surrounding the transactions and the possibility that, if the negotiations became public knowledge, RBKC could either be subject to a judicial review application or outbid by third parties interested in the site. The acquisition was later publicized through the Westway Newsletter in June 2016 and an article in *Get West London*.

The incorrect ward was listed on the KD, which meant the three ward Councillors – all Labour – were not afforded the opportunity to scrutinise the decision prior to approval. It was later established that two ward Councillors received the decision only by virtue of being Members of the Cabinet and Corporate Services Committee, who received copies of the draft Key Decision. The explanation provided within email correspondence by Mr. Egan was that the failure to provide documentation was human error on the part of Corporate Property Department.

