

Extraordinary Council Meeting

Monday 1st August 2022



Title	Outcome of the independent external Investigation into the Waterfront Development Project
Purpose of the report	To note
Report Author	Petra Der Man (interim) Monitoring Officer
Ward(s) Affected	All Wards and Particularly Staines & Staines South
Exempt	No
Exemption Reason	N/a.
Corporate Priority	Affordable housing Recovery Service delivery
Recommendations	<p>Committee is asked, when considering the external independent Report into the Waterfront Development Project, carried out by Yinka Owa to:</p> <p>Note -</p> <ul style="list-style-type: none">a) the broad terms of reference for the external independent Investigator,b) the timeline covered,c) methodology,d) that all information provided by the many witnesses involved has been assimilated by the Investigator into the production of the report,e) the identified concernsf) the comprehensive findings, andg) the recommendations of the Investigator.
Reason for Recommendation	This is a report to note, because the external independent Investigation that was commissioned by the Council is now

	complete and the Investigation Report is here reported. (It is produced at Appendix 1.)
--	---

1. Summary of the report

- 1.1 This covering report provides Members with the external Investigation Report that was carried out by Yinka Owa at Appendix 1. The final Investigator report was not finalised until this month; namely July 2022.
- 1.2 This Council, through the Local Government Association, appointed Yinka Owa in September 2021 to carry out an in- depth investigation to address the totality of concerns raised by some resident groups and Councillors.
- 1.3 The concerns raised were about the decision making by the Council leading to the award of contract, the procurement process and the mass, scale and density of the proposed development particularly in the context of the surrounding conservation area and the historic buildings around the site including Staines Bridge. The Investigator summarised the concerns into 12 separate parts.
- 1.4 The Investigator has produced her Report which is attached in entirety here, (at **Appendix 1.**) together with its related Appendices.
- 1.5 Produced separately from this report is a related FAQ's document, which will be available for Members at the Extraordinary Council Meeting on 1st August 2022 and to the public from the same date. Councillors require an inquiry into the Waterfront development project to take place as soon as possible. A task group – the Review Group is to be set up to over see this process.
- 1.6 Members are reminded that on 5th July 2021, the Council's Corporate Policy and resources Committee approved the setting up of a dedicated task group, 'The Review Group, comprising of Councillors was established to oversee the process for commissioning the Investigation and its delivery upon completion.
- 1.7 Here, for ease of reference are the relevant hyperlinks to the decisions entered into to determine the related terms of reference and identity of Members on the Review Group as well as a related announcement from the then Leader:-.

<https://democracy.spelthorne.gov.uk/ieListDocuments.aspx?CId=296&MID=3489#AI14140>.

<https://democracy.spelthorne.gov.uk/ieListDocuments.aspx?CId=296&MID=3490#AI15357>.

<https://democracy.spelthorne.gov.uk/ieListDocuments.aspx?CId=133&MID=3469#AI14713>.

- 1.8 The Review Group are facilitating and organising the presentation of the Independent Investigator's Report into the Waterfront Development by Yinka Owa.

2. Key issues

- 2.1** Members are respectfully asked, when reading the attached Report (Appendix 1) with its related Appendices, to particularly note a) the broad terms of reference for the external independent Investigator,
- b) the timeline covered,
 - c) methodology,
 - d) that all information provided by the many witnesses involved has been assimilated by the Investigator into the production of the report,
 - e) the identified concerns
 - f) the comprehensive findings, and
 - g) the recommendations of the Investigator.
- 2.2** The Investigator has carried out a “comprehensive and robust investigation”. The period covered by her investigation is between September 2017 and 30th April 2020.
- 2.3** The Investigator has spent more than 220 recorded hours interviewing over 40 witnesses and has reviewed over 10,000 pages of documents. Those interviewed by the Investigator included Councillors, Council officers, consultants, local residents and representatives of local resident groups.
- 2.4** The Investigator looked at the local Constitutional process that was present during the relevant period with related applicable governance procedures. She reviewed all relevant legislative requirements, analysed the Council’s role of landowner and also separately in its statutory role of Local Planning Authority.
- 2.5** The Investigator addressed the applicable ‘planning context’, its local history, the ‘emerging local plan and Staines Development framework’.
- 2.6** She further assessed the related procurement process, including the steps taken in the lead up to the procurement process itself.
- 2.7** The Investigator reviewed all the relevant Cabinet briefings linked with the site’s procurement process, all related briefings, dialogue sessions and the Development Agreement.
- 2.8** The Investigator further considered the governance steps throughout, including noting reference being made to the matter on the Council’s Forward Plan and the fact that the matter was discussed at Extraordinary Council Meetings. Specifically, reference to what occurred during particular related Extraordinary Council Meetings with reference to the matter itself, is also made by the Investigator.
- 2.9** The ‘Bid Evaluation Process’ was reviewed by the Investigator.
- 2.10** The involvement of Councillors with the evaluation of bids was scrutinised by the Investigator.
- 2.11** The impact of covid together with national lockdown was noted by the Investigator on the process which led inevitably to the use of virtual meetings and more online communications.
- 2.12** The process and details of the notification of completion of [the] procurement process and successful bidder was analysed by the Investigator.

- 2.13 The Investigator also reviewed the related Council briefing and press release that was sent out to residents on the award of contract.
- 2.14 the Investigator identified all the concerns that had been raised by some local residents and councillors and broke them down into 12 numbered concerns which she expressly considered and referred to within her investigation Report. All 12 numbered concerns are set out in full at **Appendix 2** to this covering report.
- 2.15 The Investigator separately sets out her findings which she has set out within 45 numbered paragraphs, to address the concerns. For ease of reference, all the Investigators' numbered paragraphs to address her findings are set out in full at **Appendix 3** to this covering report.
- 2.16 It is sufficient and significant to note that from and within all the numbered findings, there are none which set out any wrongdoing.
- 2.17 The Investigator has concluded her report by making a number of 'recommendations'. (The Investigator's express recommendations are set out in full at **Appendix 4** to this covering report).
- 2.18 It is sufficient and significant to note that since the period covered by the Investigation report, the Council has formally adopted a different corporate governance model. The implications therefore to be taken from many of the Investigator's recommendations are now therefore no longer relevant.
- 2.19 The Council has been carrying out formal reviews, as a work in progress, of the current Constitution since adoption of its new current governance model; namely its Committee System as from 27th May 2021.

3. Financial implications

- 3.1 To date, the Council has been invoiced for £63,600 for the professional services of the Independent Investigator. Given that the final report was only completed in July 2022, it is anticipated that further final invoice(s) will be forthcoming to cover additional related work. In addition, there is (i) the unquantified and related cost of Council officer time involved in facilitating the Inquiry and (ii) the further unquantified time spent by those involved providing evidence to the Investigator.

4. Legal implications

- 4.1 The Borough Council is a public authority under the Human Rights Act 1998, as amended. Therefore, the Council is required to act compatibly with the convention rights in the exercise of their functions. Article 6 (1) of the Convention provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial hearing established by law.

5. Equalities Implications.

- 5.1 The Equality Act 2010 introduced a public sector equality duty. In summary, the Council must in the exercise of its functions, have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

Advance equality of opportunity between people who share a protected characteristic and those who do not.

6. Sustainability/Climate Change Implications

- 6.1 There is nothing specifically relevant.

7. Risk

- 7.1 There have been serious and relevant implications for the reputation of Spelthorne Borough Council, for its professional officers, and for the reputation of Spelthorne Councillors. This has been a protracted external investigation and necessarily so. The Council through the LGA commissioned the services of the independent external Investigator to address all concerns raised and the obvious lack of trust in the process, the governance and in the role of officers and councillors involved with this matter.
- 7.2 The need for transparency in the independent comprehensive Investigation process has been recognised and maintained, such that the Investigator's report in its entirety is here published, available for the public to see, and to be scrutinised by Members during the open ECM.
- 7.3 The publication of the Report in its entirety as a public report available to Council and the public is the chosen method of the Task Group.

8. Contact

- 8.1 Petra Der Man (p.derman@spelthorne.gov.uk)

Background papers:

none

Appendices:-

1.The External Report into the Investigation into the Waterfront Development Project by Yinka Owa – Independent Investigator

[Appendices 4 referred to within the external report produced by Yinka Owa, relate to parts of the January 2019 Constitution. For ease of reference, here is a publicly available link to that Constitution:

<https://democracy.spelthorne.gov.uk/documents/g2032/Public%20reports%20pack%20Tuesday%2022-Jan-2019%2014.49%20Constitution.pdf?T=10&Info=1>

Appendix 2. All concerns noted and addressed by the Investigator.

Appendix 3. All Findings noted and set out by the Investigator.

Appendix 4. All Recommendations noted and set out by the Investigator.

APPENDIX 2

All “concerns” raised by from some local residents and also from some Councillors which were expressly identified and considered by the Independent Investigator, Yinka Owa in her Report into the Waterfront Development Project.

- “1. The height, scale, mass and density of the proposed Arora development.
2. The alleged secrecy surrounding the decision making leading to the award of the contract to Arora.
3. The allegation that the decision had been made by the Leader, his wife (Councillor Helen Harvey) and a handful of other councillors said to be the Leader’s close allies.
4. The alleged failure to consult ward councillors and residents on the proposal.
5. The alleged failure by the council to discharge its statutory duty to co-operate with affected neighbouring authorities and the providers of relevant infrastructure prior to the Development Agreement being approved and signed.
6. The allegation that because the Leader knew the Majority Group was in the process of organising another vote of no confidence against him and that this time he is likely to lose it, he deliberately rushed the decision when it could have been delayed because of Covid and the national lockdown.
7. The allegation that this was a vanity project for the Leader and he was going to see it through whatever the circumstances as his ‘parting shot’ to the Conservative Party.
8. That senior officers, who should have kept the Leader in check, were working in cahoots with him.
9. The grounds on which the Leader, other councillors involved and officers concluded that the proposed development, given its height and mass, would be compatible with its location in the Conservation Area.
10. That there was some effort by the Leader and officers to award the contract to Arora because of the Leader and senior officer’s previous associations with the company, for example, the council’s purchase of the building known as World Business Centre 4 (WBC4) from a company in the Arora Group of companies.
11. hat the terms of the Development Agreement had been drafted in favour of Arora to the detriment of the council, for example, the length of the term of the lease, favourable rent free provisions, undertaking by the council to assist Arora in obtaining planning permission to build the development.

12. Another concern was that the Development Agreement was not referred to or called in by the council's Overview and Scrutiny Committee.
-

APPENDIX 3

All "Findings" produced by the Independent Investigator, Yinka Owa in her Report into the Waterfront Development Project.

" FINDINGS

1. I found no evidence that the Leader acted outside of his executive powers in relation to any aspect of this procurement project.
2. I found no evidence that this public works procurement breached any of the provisions in the Regulations.
3. I found no evidence that the Leader, Cabinet Members and officers involved with the procurement process breached any provision in the January 2019 constitution.
4. I found no evidence that the Leader, Cabinet Members involved in the procurement and officers acted out of personal gain or for reasons of financial incentives.
5. I found no evidence that the Member Code of Conduct or Officer Code of Conduct was breached in any aspect of this procurement project.
6. The council acted in its role as a landowner entering into a contract and the grant of a long lease to a developer to develop its land. That contractual relationship took the form of a Development Agreement and associated documents issued with the tender pack at the commencement of the procurement process.
7. The Development Agreement is a contract. It is a commercial contract. It is not a planning document.
8. The council has no legal duty or obligation to consult ward councillors, residents or other external public bodies in settling the terms of the Development Agreement.
9. In the Leader and Cabinet model of governance, officers have no duty to consult ward councillors or other councillors or residents on a procurement exercise.
10. The bidders would be required to disclose commercially and financially sensitive information as part of the competitive dialogue process. This is to enable the council and bidders to conduct open and frank negotiations. Such information would have played an active part in selecting the winning tender and would have informed some of the provisions in the Development Agreement.
11. For a procurement exercise of this nature and scale to be successful, the bidders have to be confident that their sensitive information would be kept confidential and not disclosed to third parties during the competitive dialogue process.
12. It is at the planning stage, when the successful bidder applies to the council for planning permission to build its scheme that the council, acting as a Local Planning Authority (LPA), has a statutory duty to consult.

13. The Development Agreement is conditional on the successful bidder obtaining planning permission from the council acting in its capacity as an LPA. Planning is not an executive function.
14. Arora would have to satisfy the requirements of the LPA to obtain planning permission.
15. Officers do not participate in party political group deliberations. They have no control over or involvement in how party political groups within the council are run or what and when information is provided by the Leader, Cabinet or other councillors to political party groups.
16. How political party groups operate and their dynamics sit outside the council's constitution.
17. I found no evidence that the terms of the Development Agreement were unreasonably favourable to Arora to the detriment of the council.
18. The provisions are balanced in a way that they will be acceptable to the industry and enable any developer (the successful bidder, in this case Arora) to access funding should they need to but at the same time the document contains sufficient provisions to protect the council's interests and ambitions for the site.
19. Residents were concerned that the council gave an undertaking in the Development Agreement to support Arora in obtaining planning permission.
20. This is a standard provision where the ownership of the land has not yet transferred to the developer.
21. As the land is still in the council's ownership, Arora will require the council's (as landowner) support to put together their planning application, for example, to access the site to carry out surveys or access documentation relating to the land in preparation for submitting their planning application.
22. The council as LPA in determining Arora's planning application must do so on sound planning grounds. It has a statutory duty to treat Arora's planning application as it would any application coming before it.
23. The drawings of the proposed development provided by Arora and sent to the Majority Group by the Leader is clearly marked as indicative of the design of the proposed development. It is not the final plan and drawing of the proposed development. The development's height, mass and density will ultimately be decided by the LPA after discharge of its duty to consult as required by law.
24. Residents were also concerned about the rent provisions in the document.
25. This is a project over a number of years that would require the developer to expend millions of pounds in development costs. It is not unusual with such projects to draft the rent provisions in such an agreement in this way so as to attract bidders.
26. Because of the complexity of the procurement exercise, council officers were supported by experienced and reputable external legal advisors and did not act alone.
27. I found no evidence that the Leader knew who the final two bidders were until March 2020 when he became partly involved in evaluating the final bids.

28. The Leader sought advice from the council's Monitoring Officer at the time on whether there was a conflict of interest and whether to declare an interest because of his prior dealing with Arora in his capacity as Leader of the council during the council's purchase of World Business Centre 4 from one of the companies in the Arora Group of companies.
29. He was advised by the council's Monitoring Officer at the time that he did not have a conflict. It was not a disclosable pecuniary interest as the association was in the line of his role as Leader.
30. Whilst not usual practice for councillors to be involved in the evaluation of tenders, officers invited the Leader and other councillors to participate in the assessment of a part of the quality element of the submitted tenders. The Leader had been quite particular about the quality of the development on the site and it seemed appropriate to officers that he was involved in that aspect. This is not an unreasonable decision to make.
31. I found no evidence that the process was not delayed because the Leader realised his time in office might be coming to an end because his colleagues in the Majority Group were about to vote him out.
32. Whilst I cannot rule out that on a human level this might have been a factor, there is evidence from the time table provided to bidders at the start of the process that internal approvals, including Cabinet approval for the award of contract, would be sought in April 2020 and completion of the Development Agreement was scheduled for May. It was signed off on 30 April.
33. It is a strong argument that given the backdrop of a worldwide pandemic and an unprecedented upheaval of life as we know it, the completion of a procurement process relating to the hospitality industry, which was heavily impacted by the pandemic, should not have been a priority at that time.
34. The counter-argument put forward by the councillors and officers involved in the procurement exercise was that it had been a complex, long and expensive process that had reached its final stages. Both the officers and councillors involved were of the opinion that the council had obtained a favourable deal and delaying or aborting the process was not in the council's long term interest because it looked unlikely that the council would secure such a good deal at a later date.
35. Also, none of the bidders had requested delaying or aborting the process.
36. The councillors on Cabinet should have been aware of the project since the September 2019 Cabinet briefing session by officers. The Waterfront Project as the procurement exercise was referenced in the Cabinet Briefing notes was on the agenda for those briefing sessions from September 2019 until March 2020.
37. The Cabinet Members had opportunities to ask questions of officers and the Leader at those briefing sessions and some did.
38. The decision to approve the award of the contract to Arora was made unanimously by Cabinet. The vote was not whipped. Cabinet Members could vote as they saw fit.
39. The councillor who was the Majority Party Whip during this period said that he did not recall any occasion when councillors were told how to vote on any

matter including the decision whether or not to award the contract for the re-development of the site to Arora.

40. The procedure for a decision to be called in by Overview and Scrutiny Committee is set out above. In the Leader and Cabinet executive arrangement, there is no statutory or constitutional requirement for the Leader and/or Cabinet to refer matters or legal documents to the Overview & Scrutiny Committee.
 41. The Chair of the Overview and Scrutiny Committee at the time stated that she was not approached by any councillor, including those not on the committee, about calling in the decision to award the contract to Arora.
 42. The decision was not implemented until expiry of the call in period – the period in which the decision could have been referred to Overview and Scrutiny Committee to be called in.
 43. The first time councillors in other political parties became officially aware of the transaction was from the council's press release of 4 May 2020 when the council officially and publicly announced the award of the contract to Arora.
 44. Opposition councillors had not been involved in or informed about any aspect of the process.
 45. There was no mechanism within the Leader and Cabinet governance model for their input."
-

APPENDIX 4

All "Recommendations" produced by the Independent Investigator, Yinka Owa in her Report into the Waterfront Development Project.

1. These events occurred whilst the council operated the Leader and Cabinet model of governance. It moved to committee system of governance in May 2021.
2. Recommendations that I would have made to address some of the issues that arose will not be applicable given that the council now operates a committee system of governance.
3. Much was made of the fact that the decision on 8 April 2020 was not referred to the Overview and Scrutiny Committee to give that committee the opportunity to review the Development Agreement before it was concluded. Why this is an erroneous view has been addressed above.
4. I would have recommended targeted training for members generally and those on Overview and Scrutiny Committee in particular about how overview and scrutiny worked, their role, powers and how call in works within the council's constitution would have been beneficial to clear up a number of misconceptions.

5. In the context of the council's current committee model of governance, I recommend that interactive and councillor led training be arranged for councillors on how the council operates and how decisions are made and opportunities to influence and challenge decisions.
6. All Councillors could benefit from training on how the planning system works and the role of the council as an LPA.
7. Councillors' induction training for new and returning councillors should stress the need for them to maintain the confidentiality of council information that comes to their knowledge and/or possession. They should be reminded that failing to do so, without good cause, could be a breach of the Member Code of Conduct.
8. The site was the Bridge Street car park then 'The Waterfront'. The procurement project for the combined site of Bridge Street Car Park and Hanover House was referred to as the 'Waterfront Project' understandably following the council's acquisition of Hanover House and also for marketing purposes.
9. In the Forward Plan of 12 March 2020, the project is referred to as the 'Staines Development.' The report to the Extraordinary Cabinet meeting of 8 April 2020 is titled 'tender report for Staines Development'.
10. It was alleged by some of interested parties that I interviewed that this 'low key' description of the site on the Forward Plan was to avoid scrutiny and keep the intended award of the contract to Arora 'under the radar' so as to reduce the opportunity for challenge by councillors and the public.
11. I recommend that extra care should be taken by officers to maintain consistency of description of projects particularly in documentation or publications aimed at councillors and the public to prevent confusion and suspicion. There is no real reason why the same project should be called by different names.
12. Councillors also complained about the volume and quality of papers that are presented to them by officers in their roles as councillors, committee members and community leaders.
13. This complaint is not unique to this local authority.
14. Most councillors lead busy lives. Some have full time jobs and family life and commitments that they struggle to juggle with their council duties. An already pressured situation is made worse when councillors are presented with paperwork that they find difficult to wade through and understand or appreciate what is at stake.
15. They believe this negatively impacts their ability to make decisions or take action on a fully informed basis. Some feel that the lack of clear and understandable information in easily digestible format is deliberate by officers so they are kept in the dark or not fully appraised of council decisions and activities. This has led to some councillors having no confidence in information and/or advice received from some officers.
16. I recommend that the council conduct a review of how and how much information and paperwork are presented to councillors with a view to work with councillors to better understand the issues raised and how to address them.
17. I recommend that the council's Monitoring Officer, with input from other relevant officers and councillors as appropriate, review the council's report templates to ensure they are in a format that, whilst meeting statutory and constitutional

requirements, also addresses the point made by some councillors to be given the tools that enable them to make informed decisions.

18. Reports should be clear on their face whether they are for councillors' decision or information.
19. Councillors expressed varying degrees of unease about the presence of so many external consultants advising and acting on behalf of the council particularly in senior roles. Some even questioned the legality of decisions taken by consultants not directly employed by the council and whether the council is bound by their decisions.
20. I recommend that the relevant senior officers in the council review the use of external consultants particularly in key roles with a view to identifying those that can be filled by direct recruitment and undertake a recruitment drive to fill those positions."