KPMG

cutting through complexity

The Council's Arrangements for Managing Capital Regeneration Projects

Corby Borough Council Audit
2010/11

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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Introduction

1. On 1st September 2012 KPMG was appointed auditor to Corby Borough Council by the Audit Commission under Part II of the Audit Commission Act 1998 (the 1998 Act) to audit the accounts of Corby Borough Council (the Council). Section 8 of the 1998 Act requires the auditor to consider whether, in the public interest, to report on any matter coming to their notice in the course of the audit in order for it to be considered by the body concerned or brought to the attention of the public.

2. KPMG's appointment followed the Audit Commission's decision to outsource the work of its Audit Practice. Under the terms of this appointment KPMG is responsible for completing any work outstanding at 1st November 2012 relating to the 2011/12 audit or earlier. KPMG is issuing this report but it is based, in part, on work carried out prior to November 2012 by the Audit Practice of the Audit Commission. The appointed auditor in the Audit Practice also transferred to KPMG in November 2012 and has continued to lead this work.

3. We are issuing this report in the Public Interest under section 8 of the 1998 Act due to the scale of the cost involved, the significance of the findings and the high level of interest shown by the public in the subject matter.

4. As the report is issued under section 8 it will be required to be dealt with in accordance with section 10 of the 1998 Act which requires our report to be considered by the Council at a public meeting.

Our responsibilities

5. External audit is an essential part of the process of accountability for public money. Appointed external auditors operate within the duties and powers given under the Audit Commission Act 1998 and the Code of Audit Practice (the Code) approved by Parliament. The Code determines the nature, level and scope of external audit work. Under the Code, the external auditor provides:

- an independent opinion on a public body's accounts; and
- an independent value for money conclusion as to whether a public body has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources

6. The Code of Audit Practice identifies that proper arrangements for securing economy efficiency and effectiveness include the following:

- planning finances effectively to deliver strategic priorities and secure sound financial health;
- reliable and timely financial reporting that meets the needs of internal users, stakeholders and local people;
- commissioning and procuring quality services and supplies that are tailored to local needs and deliver sustainable outcomes and value for money;
- promoting and demonstrating the principles and values of good governance; and
- managing risks and maintaining a sound system of internal control;

Background

7. For a number of years one of the Council's main priorities has been regeneration and growth, with one of its current objectives being to double the Borough's population by 2030, with a complementary increase in jobs, prosperity and quality of local public services.

8. In order to achieve this, the Council has undertaken, or been involved in promoting, a number of large capital projects aimed at regenerating the local area. Some of these such as the swimming pool and Enterprise Centre are regarded as having been successfully delivered, and indeed based on a 2009 assessment the Audit Commission recognised the regeneration outcomes achieved at that stage by awarding the North Northamptonshire area a "Green Flag" as part of its Comprehensive Area Assessment. The range of capital schemes also includes the following construction and refurbishment schemes which have all either more recently been completed or are reaching completion:

Scheme	Timescale	Gross Cost (£m)	Net Cost (Income) (£m)
Kingswood Housing Development	March 2010 – August 2011	16.4-17.2[a]	(2.6)-(1.3)[a]
CUBE (Civic Offices)	June 2007 – current date	47.6[b]	24.6[c]
Rockingham Triangle (Phase 1)	August 2009 – current date	3.3[d]	2.0[d]
Total		**67.3 – 68.1**	**24.0 – 25.3**

Note: (a) Excludes the cost to the Council of donating land. Source CBC figures to support OCPC Report 17/7/12
(b) Source OCPC report 17/7/12
(c) Source CBC CUBE Scrutiny Review report para 4.10.1
(d) Source 17/7/12 OCPC Report

9. Other organisations have played a part in each of the construction and refurbishment schemes above and each scheme has attracted funding from sources outside the Council, but in each case the Council has played the major role in managing the projects and bearing related risks. The actual gross cost of each scheme exceeded the initial budget in all cases, but was particularly marked in the case of the CUBE, where the Council's initial budget of £32.6 million compares with its latest estimate of £47.6 million.

The Kingswood Housing Development

10. The Kingswood Housing Development delivered 116 newly built houses for sale and 30 social housing units. Grant was provided by the Homes and Communities Agency (HCA) and the project managed by a developer. The Council's involvement in the scheme was considered and approved by the One Corby Policy Committee (OCPC) in June and December 2009. The Council's role, as agreed by OCPC, included establishing a £10 million "clearing fund", whose initial purpose was to buy any unsold houses at the end of the development at 70% of estimated market value. This was later extended to financially guarantee the development should the developer default. The development was on Council owned land.

11. The Council entered into two agreements to deliver the project:

- A tri-partite agreement with the developer and the HCA, which dealt with the grant funding from the HCA and the clawback of a portion of any "surplus" made and included conditions relating to the development.
- A separate project management agreement with the developer under which the Council provided a "work in progress" facility of up to £10 million for the developer "throughout the development" to "facilitate the development".

12. The appointed auditor raised concerns about the financial management of the scheme in September 2010 in his Annual Governance Report (AGR) and again in January 2012 in his 2010/11 AGR. The latter followed whistle-blowing concerns by the Head of CB Property relating to the project received in October 2011 and the lack of action taken by the Council in response to the September 2010 AGR.

13. In responding to the auditor's January 2012 report the Council acknowledged that the Kingswood scheme had not been well managed. It agreed to undertake a review to ensure adequate controls and governance arrangements are established for all future major projects.

The Cube Development

14. The construction of the Cube as a new civic hub was part of the redevelopment of the Southern Gateway to the town centre. The Council had set up the Parklands Gateway Committee (PGC) in 2004 to oversee its involvement in the redevelopment.

15. In 2005 following a design competition Catalyst Corby, the Local Urban Regeneration Company, appointed architects to provide design services for the Cube, but to avoid incurring VAT, the contract was transferred to the Council, which then took a lead role in progressing the design and contracting with and managing the construction phase. The architects led the "Design Team" which worked on the development. The Council remained responsible for contract administration.

16. In 2005 the PGC agreed to set up a Project Board (the Board) to manage the Cube development. As well as the then Council leader, Chief Executive and Head of Special Projects the Board had representatives from other partners such as end users of the building and other organisations providing funding for the project. The PGC approved the initial budget of £32.6 million in August 2006. In 2007 the Council disbanded the PGC, subsuming its role into that of the Lead Member for Regeneration, with key decisions to be made by OCPC.

17. The Board met regularly and considered a wide range of issues connected with the development of the Cube from November 2005 to December 2011. These included the performance of the design team and contractors and related claims for additional fees, the nature of the contracts the Council agreed with them and the overall cost of the development. Requests for additional budget were made by the Board to OCPC during its construction.

18. The Council had secured £9 million of funding from the Department for Communities and Local Government (DCLG), which was dependent on the Council incurring expenditure of a similar amount by March 2008. In 2007 the Council signed a contract for early enabling works in that year, in order to help secure the grant. In January 2008 the Council signed a contract for the construction of the building.

19. The Council's latest estimated cost is £47.6 million. In June 2011, in view of the overspend against original budget, the Council commissioned its own cross party scrutiny review of the project. This was completed in February 2012 and the related report, published on the Council's website (http://www.corby.gov.uk/document/corby-cube-public-report), includes more detail relating to the project.

Rockingham Triangle

20. Corby Town Football Club (CTFC) and Corby Athletics Club benefit from the use of the sports facilities at Rockingham Triangle. Under an agreement signed in 2007 management and maintenance of the facilities has been carried out by CTFC in return for an annual grant of £90,000. The Council retained responsibility for major repairs and capital developments. Over the period leading up to 2008 OCPC had received reports on proposals for upgrade to the stadium including a new stand.

21. In July 2008 OCPC agreed to a more ambitious upgrade scheme costing £5.3 million, with a potential contribution of £2.75 million from grant income. In July 2009 OCPC agreed to a scheme costing £6.5 million, to be completed over phases, including a new stadium following CTFC's promotion. Phase 1 involved four elements and work started soon afterwards. Of the four elements the gross cost of the stadium upgrade was capped at £1.06 million (gross) with any excess to be paid by CTFC. The budget for each element is shown in the table below.

Element	Gross Budgeted cost (£)	Budgeted income (£)	Budgeted Net
Land purchase	250,000		250,000
Tennis courts	276,500	(350,000)	(73,500)
Stadium & infrastructure	1,060,000	(210,000)	850,000
Pavilion	1,000,000	(500,000)	500,000
Total	**2,586,500**	**(1,060,000)**	**1,526,500**

22. Finance staff reviewed the project in the second half of 2011, when work on the tennis courts and stadium was complete, but the pavilion had not been started. The subsequent report in July 2012 showed an overspend, at that stage, on the net budgeted cost to the Council of £756,000, with most of that stemming from an overspend on the "capped" stadium budget. It also explained that CTFC could not fund any of the excess cost. The report presented options for the Council which agreed to increase its capital funding to cover the stadium overspend and pursue the pavilion upgrade on the basis of additional grant funding from new sources. If the additional grant funding was not confirmed, the upgrade to the pavilion would be reduced.

23. In 2009, whilst the scheme was being developed the former Chief Executive and the then leader signed an agreement to guarantee a £60,000 loan taken out by CTFC to repair a fire damaged bar area.

Sales of land at St James

24. The Council's priority of regenerating the area also included the sale of the following areas of development land owned by the Council.

Area of land sold	Date sold	Sale Proceeds (£m)
Land at St James (known as "Yellow Land") – approx 15 acres – comprising "Yellow Area" & "Blue 2" on the map at Appendix 1	March 2010	0.082
Land at St James (known as "Blue Land") – approx 5 acres shown as "Blue 1" on the map at appendix	October 2010	3.700
Total		**3.782**

25. In 2001 the Council agreed option agreements for each plot of land with a property developer. The option agreements ran until 2008 and allowed the developer to buy land under a price formula. The developer had secured planning permission on the sites for office and industrial/distribution uses.

26. In 2006 the Council paid the developer £721,300 to release itself from the Blue Land option agreement, and agreed a revised option agreement with the developer on the Yellow Land. The new agreement ran until February 2015 and allowed the developer to buy the Yellow Land for office and industrial/distribution use based on a price formula. It also required the developer to sign an overage deed after each purchase (with some limited exceptions) entitling the Council to share any increase in land value if a new planning permission was obtained before 2015. The developer assigned the Yellow Land option agreement to Greatline, a separate development company, in June 2008.

27. In August 2008 the Overview and Scrutiny Panel (OSP) received a report concerning the potential sale of the Blue Land to Greatline. The Panel recommended to OCPC approval for the sale of the land treating Greatline as a "special purchaser" (meaning the proposed purchaser had an interest in the land which may be beneficial to both seller and buyer and the land therefore did not have to be marketed), and the inclusion of an uplift agreement to capture a share of any future increase in value.

28. During 2008 and the first half of 2009 sporadic discussions were held with Greatline about the possibility of putting the option agreement to one side and purchasing the freehold of the Yellow Land outside of the agreement. The Yellow Land was eventually sold to Greatline in March 2010 for £82,031, outside of the option agreement and with no restriction on its future use or any uplift or overage agreement to allow the Council to benefit from future increases in land value.

29. In September 2010, OCPC agreed to a proposed sale of the Blue Land to Greatline, following OSP's agreement in principle to do so (see paragraph 27 above). The report considered by OCPC explained that Greatline had been accumulating land at St James for a possible Tesco superstore, the Yellow Land recently sold to them would form part of the superstore development, and agreed a price of £3.5 million with potential for further uplift following independent valuation of the Blue Land site. The above was subject to the Council obtaining legal advice on the sale and Greatline obtaining the necessary planning consent for the development.

30. In October 2010 the Council jointly sought Counsel's advice with Greatline on the proposed sale of the Blue Land, and also, retrospectively, on the Yellow Land sale which by that time had already been finalised. It is not clear why this was not done before the sale. The Council's Head of Legal and Democratic Services drafted the instructions for Counsel, but these were edited and amended by solicitors acting for Greatline before they were finalised.

31. The Council sold the Blue Land to Greatline on 15th October 2010. Planning permission for the superstore development was obtained in June 2011. In September 2011 the Head of CB Property commissioned a "desktop appraisal" of the Yellow Land sale from an external valuer. This concluded that, with the benefit of the retail planning permission obtained, the indicative value of the Yellow Land was between £6.9 and £9.7 million.

Severance Agreement with the Chief Executive

32. During August and September 2011 the Council's Monitoring Officer received written whistle-blowing allegations from the Head of CB Property about the conduct of the then Chief Executive in relation to the sale of the Yellow Land. The Investigation and Disciplinary Committee met on 12 October, 7 November 2011 and 31 January 2011 to consider the allegations and consider options. The Council, responding to a proposal by the then Chief Executive and having sought external professional advice, agreed on 23 February 2012 to a managed departure for the Chief Executive.

33. In March 2012 the Council signed a severance agreement with the former Chief Executive. This provided for his secondment to another organisation at the Council's expense until January 2013, after which his employment with the Council would be terminated allowing him access to unreduced pension benefits. This was estimated to cost the Council £217,000, but was adjudged by the Council to be less costly and time consuming once ongoing salary commitments were considered and give more certainty at an earlier date about the Chief Executive's position.

Audit approach

34. Each of the above regeneration projects involved significant amounts of Council finance and included major capital transactions as part of the Council's aim of regenerating Corby. Allegations relating to the land sales at St James have also resulted in severance agreement with the former Chief Executive. We have therefore reviewed the Council's arrangements for managing the above developments in the context of our responsibilities outlined in paragraph 5 above.

35. In doing so we have identified significant weaknesses in the arrangements and the way the arrangements were applied. We have also considered the findings from the previous auditor's earlier review of the Kingswood scheme which had already reported to the Council in January 2012, and the Council's own review of the Corby Cube overspend. We agreed with the Council's suggestion that our review also cover the Rockingham Triangle Development for in the interests of transparency.

36. As part of the review relevant members and officers, both current and past, have been interviewed and relevant documentation reviewed. The previous appointed auditor has also taken independent specialist valuation advice in respect of the sale of land at St James. The former Head of Legal and Democratic Services (who held the role of Monitoring Officer at the time) and who left the Council in April 2011 was involved to varying degrees in all four regeneration projects reviewed. He declined to be interviewed or answer questions in writing as part of this review, but did offer some comments on the draft report. We have therefore only been able to take into account his comments to that extent. The ex Leader of the Council has also not been interviewed as she died in April 2012.

37. Where we have referred to whistleblowing allegations in paragraphs 12 and 32 we would not normally identify the whistleblower, but in this case the individual has requested that he be identified.

38. Where it is necessary to give sufficient context to the findings we have commented on actions taken by other organisations which were involved in the capital projects reviewed. Our focus is though on the arrangements of the Council. It is not the purpose of this report to investigate or comment on the appropriateness of the actions of other organisations.

Structure of Report

39. We have identified a number of weaknesses and areas for improvement which have recurred in more than one of the capital developments reviewed, indicating that they may be more systematic than one off failings. The report is structured so these are drawn out in the main body of the report under themed headings.

Main conclusions

40. We have identified a significant number of failings in the Council's arrangements for managing four major and important regeneration capital projects. The governance arrangements the Council put in place to manage the projects were ambiguous. Where established governance arrangements and internal controls did exist they often did not operate as they should have done, and in some cases were overridden by senior management. Financial and project management of the projects was poor. This was all compounded because the checks and balances which would have alerted the Council to these failings, including the statutory responsibilities of key officers, did not operate as they should.

41. This has meant that, in our view, the Council may have made decisions contrary to law and against its internal policies and procedures. It has exposed itself to risks it need not have done had its management arrangements been fit for purpose and operated as they should have done. In our view this has resulted in it spending considerably more than it needed to on the construction projects and receiving significantly less than it could have done in respect of the sale of the land at St James.

42. The previous appointed auditor reported to the Council in May 2012, highlighting the financial challenges and risks faced by Council. Over the last few years external borrowing increased from nil to £47 million in 2011/12 and the Council had limited usable revenue reserves over its minimum designated general fund balance of £0.8 million at that time. The Council has a Medium Term Financial Strategy aimed at managing the risks and it has since decreased its external loan debt to £36 million, but there is little doubt that it would have been in a better position to address these had the failings not occurred.

43. The Council needs to take immediate action to improve its governance arrangements. This includes how members fulfil their role, compliance with legal requirements and its own policies and procedures, and arrangements for ensuring this happens. Financial and project management arrangements need strengthening, as does the way the responsibilities of chief officers are fulfilled.

44. We are also aware that during 2012 the Council has taken action to improve arrangements in some areas covered by this review rather than awaiting the final audit report. In particular it has begun to respond to the recommendations in the Cube Scrutiny review. It also commissioned an external review of the Council's overall financial health by the LGA and a separate external review of the auditor's findings on the Kingswood development reported in the last Annual Governance Report. It has also overlaid this with a voluntary Improvement Board in liaison with the Local Government Association. The Board includes external members with local government expertise and experience and is aimed at helping the Council improve its governance, resilience and culture. The views of the Improvement Board are reported on the Council's website. Where action has been taken this has been noted in the report where relevant.

45. The purpose of this report is not to detract from the real benefits to Corby residents from the regeneration projects considered in this report. However, these should not, and did not need to be, at the expense of good corporate and financial governance.

Next Steps

46. As a report in the public interest issued under section 8 of the Audit Commission Act,, there are formal legal requirements with which the Council must comply:

- It must consider the report at a Council meeting, within one month of its receipt;
- It should publicise, in advance, the Council meeting and the reason for it;
- It should publicise after the meeting the decisions taken.

Neil Bellamy
Director
For and on behalf of KPMG.LLP, Appointed Auditors
18 June 2013

Detailed report

Introduction

47. The detailed report is structured around the following themes:

- Governance arrangements;
- Breach of statutory obligations;
- Failure to comply with Council policies and procedures;
- Financial management;
- Project management of the Cube;
- Use of professional advice; and
- Actions of senior officers.

Governance arrangements

48. We comment on aspects of the Council's governance arrangements, firstly in respect of the Cube Project Board and then in respect of the role played by members more generally.

Cube project – governance structures and processes

49. The Council's formally-constituted PGC originally provided member oversight of the civic hub and other projects at the Southern entrance to Corby. It received regular Civic Hub Progress Reports.

50. The Cube Project Board was established in 2005, to be responsible for

"overall management and control of the project within the remit set by Stakeholder Governing Structures and the Parkland Gateway Steering Group".

It was required to

"report as appropriate to individual Stakeholder Governing bodies".

51. The Project Board sat below the PGC in the reporting structure and usually met monthly from November 2005 until December 2011.

52. The Project Board originally comprised the Council Leader, three Council officers and representatives of project partners. It did not include the Lead Members for Finance or Regeneration. As such, it was not constituted as a decision-making body of the Council. Over time other officers and, to a lesser extent, other members attended on an apparently ad hoc basis, but its membership does not appear to have been formally reviewed.

53. Dissolution of the PGC in 2007 and rejection of recommendations to create either a Lead Member for Parklands Gateway or a Lead Member for Special Projects left the Project Board on a limb.

54. It was envisaged by the Council that member involvement could instead be channelled via the Council's Overview and Scrutiny Panel. That Panel did receive occasional reports on regeneration projects, including the Cube. These were variously presented by the Lead Member for Regeneration, who was not a member of the Cube Board, or the Head of Special Projects. It appears from the minutes of Panel meetings that these were high level and did not alert the Panel to the scale of the problems that were emerging.

55. There was no formal requirement for the Project Board to report into the Council unless additional budget needed to be requested from OCPC. For example, Board minutes were not subject to review by any committee of the Council. As the Board was not constituted as a decision-making body it is not clear how any Council decisions were to be taken. However, it is apparent from Board minutes and the perceptions of its members that it was seen as acting in a decision-making capacity.

56. In March 2009 there was a first, and only, Executive Finance Meeting, the purpose of which was

"to ensure that CBC are aware of the current financial position of the Corby Cube".

It was attended by the Council's then Deputy Leader, former Corporate Director (Resources), Head of Special Projects and Contract Administrator.

57. Cube Board minutes were taken by the Special Projects Assistant, rather than Democratic Services which provides a formal minuting service for Council and committee meetings. There is only limited evidence that they were critically reviewed for accuracy. During and since the Council's own Scrutiny Review there have been differing accounts of what was and was not said in Board meetings, but the minutes have not always been sufficiently robust to provide a definitive answer.

58. Decision making has not always been properly recorded and evidenced by the Council. For example, a decision to extend sheet piling within the enabling works contract at an additional cost of more than £200,000 was discussed in Board meetings in May and June 2007. In due course that decision cost the Council considerably more than £200,000, but when revisited by the Contract Administrator in October 2008 was found to be "very poorly documented".

59. In our opinion, with just one elected member on the Cube Board and no other opportunities for close member scrutiny, the arrangements provided for insufficient member involvement in and oversight of the Cube project.

Role and actions of members

60. We do not under-estimate the difficulty of elected members providing effective scrutiny of regeneration projects. We also acknowledge that there is some evidence of member scrutiny.

- Reports to OCPC requesting additional budget for the Cube project prompted, according to the minutes, questions seeking assurances from a minority of the members present.
- On one occasion, OCPC rejected a request for an additional £2.188 million funding for the Cube, although in reality that only delayed the eventual overspend.
- The Deputy Leader showed an interest in land sales at St James and asked questions of senior officers. He also asked questions of senior officers in respect of Rockingham Triangle.
- A member expressed disquiet over a late report relating to Rockingham Triangle and concern that members might not be able to keep track of any potential problems in relation to expenditure on the scheme.
- Members initiated and played a significant role in producing the Cube Scrutiny Report which is currently published by the Council in redacted form.

61. We do not, however, believe that members can claim that having been let down by officers in various respects exonerates them. They could and should have done more or done things differently.

- The Cube was an almost unprecedented project for a district council such as Corby, but once the PGC was disbanded no effective mechanism for member scrutiny of the project was put in place.
- Councillors appeared to accept that having a single member on the Cube Board, with no direct reporting into the Council other than requests for additional budget, was sufficient.
- The Overview and Scrutiny Panel does not appear to have provided effective oversight of the Cube. More generally, members appear not to have questioned progress between requests for additional funding.

- Two senior members were present (one for part only) at the Cube Board when the former Chief Executive appeared to suggest concealing any further overspend until after the May 2011 election. Despite this suggestion, those members did not raise any objections or take action to contradict this view.
- When presented with capital monitoring reports which were not fit for purpose, particularly on projects spanning two or more years, members did not request any improvements.
- Despite receiving reports about the proposed sale of the Blue Land at St James, no-one seemed to ask the right question at the right time about the adjacent Yellow Land.
- The former Leader of the Council, together with the then Chief Executive, signed a loan guarantee in favour of the brewery which supplied Corby Town Football Club. They lacked the authority to do so.
- On Kingswood, the auditor formally drew his concerns to members' attention in September 2010 in his Annual Governance Report, but members still did not require officers to report comprehensively on the project.

62. We acknowledge that, following similar findings in the recent Local Government Association (LGA) Financial Health Check, the Council has agreed to arrange seminars for members to strengthen and highlight the important role members have in decision making. The Council is also assessing member training needs which should provide a starting point to ensure all members appointed to or attending external or partnership bodies on behalf of the Council have the necessary skills to perform that role effectively.

Conclusions

63. Insufficient oversight by members has been a theme of the Cube, St James and Kingswood projects. In the case of the Cube, in particular, members should have been kept more fully informed of how the project was progressing so that they could be involved in important decisions at key stages. The Council needs to ensure its governance structures and reporting and decision-making processes are fit for purpose and complied with, and that members are adequately involved at the right time, on the right issues.

64. The Council should:

Recommendations

R1 Strengthen member contribution to and clarify arrangements for making decisions for major regeneration projects, particularly those carried out in partnership.

R2 Ensure that decisions are properly supported in minutes or officer decision records as appropriate.

R3 Strengthen arrangements for member scrutiny, including holding officers to account, building on the action being taken in response to the LGA recommendation.

R4 Build on the member training assessment to ensure individual members develop the skills necessary to ensure effective engagement on behalf of the Council on partnership bodies.

Breach of statutory obligations

65. Section 123 of the Local Government Act 1972 allows local authorities to dispose of property in any manner they wish, subject to a requirement to secure the best consideration that can reasonably be obtained. Any disposal for less than best consideration must be within the terms of the General Disposal Consent (England) 2003. This requires the disposal to contribute towards the promotion or improvement of economic, social or environmental well being of all or part of the relevant local authority's area or some or all of its residents, or be the subject of a specific consent by the Secretary of State if the "undervalue" exceeds £2 million.

66. The Council owned two parcels of land at St James, Corby which were commonly referred to as the Blue Land and the Yellow Land. The plan at Appendix 1 shows the overall site.

67. In October 2010 the Council sold the Blue Land for a minimum of £3.5 million, subsequently increased to £3.7 million as a result of a review mechanism contained in the sale agreement. We have no concerns about that disposal.

68. The Council had previously sold the significantly larger "Yellow Land" to the same purchaser for £82,031 in the 2009/10 financial year, setting aside an existing Yellow Land Option Agreement with the purchaser which would have afforded the Council protection via an Overage Deed. Under the Option Agreement the Council could have shared in any increase in value arising from a change of use of the Yellow Land between the date of sale (March 2010) and 2015.

69. The Council's Head of CB Property advised the then Chief Executive, albeit at a late stage in negotiations, that a restrictive covenant or some other mechanism was required to protect the Council's interests and that, in his opinion, the sale would be "undervalue" in the absence of such protection. This was because the Council knew that retail use was being planned by the purchaser, but the proposed sale price was based on use for office and industrial/distribution development. No relevant valuation or legal advice was sought at the time to inform the decision to sell – an issue returned to later in this report.

70. The former Chief Executive instructed the Head of CB Property to sell the Yellow Land without restriction, because to do otherwise would have been

"contrary to the spirit of what was agreed [with the purchaser]".

Having expressed his reservations, the Head of CB Property actioned the then Chief Executive's instruction.

71. In October 2010 the purchaser applied for planning permission to build a superstore on land it had acquired at St James, including both the Yellow Land and the Blue Land. The permission was granted in June 2011.The Council had surrendered any entitlement to a share of any increase in value of the Yellow Land from the new permission.

72. When interviewed the former Chief Executive told the auditor that:

- the purchaser had made clear they would pull out if the Council imposed a restriction in order to protect its interests;
- the Council had secured other benefits from the sale, including £1.2 million of Section 106 contributions for highway and regeneration work, a commitment by the purchaser to undertake a cinema development in Corby and additional jobs for the local economy. In our view these are not "consideration" for the sale of the Yellow Land. Some are factors that might have been taken into account in justifying a case for an undervalue sale to members or to the Secretary of State, although we do not believe Section 106 contributions were a proper factor to consider in that regard as they relate to the planning decision, not the land sale; and
- the Yellow Land could not be subject to an overage clause as it was sold under a "Funding Agreement", as defined in the Option Agreement the Council held with the purchaser. In our view the land was not sold under a "Funding Agreement". There is no reference in the sale contract to such a "Funding Agreement" and the Council told the previous auditor they have not entered into any such agreement. The auditor also obtained his own legal advice which concurred with this view.

73. The previous auditor sought his own independent valuation advice about the Yellow Land in August 2012. His valuer told him that, in his professional opinion:

- in the circumstances in which the Council sold the Yellow Land, he would have expected an overage provision or restrictive covenant to be put in place to protect the Council's interests in the event of a more valuable planning permission being obtained in the future;
- with the benefit of the Overage Deed contained in the Option Agreement, the Council could potentially have clawed back significant value – more than £2 million – from development of the Yellow Land as part of a retail superstore development;

- if the Option Agreement was set aside (as was the case), he would have expected the total value to be realised by the Council from sale of the Yellow and Blue Land together to be between £8 million and £13.3 million – that is at least £4.2 million (and potentially up to £9.5 million) more than the £3.8 million the Council achieved;
- even if the sale of the Yellow Land for £82,031 was an "aberration", the Council compounded it by failing to capture the value made from the reunion of the Blue Land with the Yellow Land in the event that planning for retail superstore development was obtained; and
- compensating benefits suggested by the former Chief Executive – such as job creation and receipt of Section 106 contributions – are not relevant to the market value of the Yellow Land. They are legitimate planning considerations which could similarly have been realised from a superstore development elsewhere in Corby by another developer.

74. The valuer concluded as follows:

"... it is hard to understand the rationale for the sequence of transactions given the potential end game of a retail superstore development. It is surprising that the Yellow Land should be sold first for a nominal amount without a clawback provision (that was in the previous option but cancelled) followed shortly thereafter by the sale of the Blue Land conditional on a suitable planning consent for superstore use, clearly pointing to the purchaser's intentions.

Having considered the information provided I have been unable to find rational explanation for the way the sales of the Yellow and Blue Land were structured...."

75. Based on the advice received, the amount of undervalue was in excess of £2 million and therefore required approval by the Secretary of State as it fell outside the terms of the General Disposal Consent (England) 2003. The Council sought no such approval. In our view it failed to comply with section 123 of the Local Government Act 1972.

76. During interviews employees told the auditor that it was felt the Council's Whistle-blowing policy and procedure would not have afforded sufficient protection had any concerns been raised. Indeed from 2008 to 2010, when the Yellow Land sale was finalised, no concerns were formally raised under the Council's Whistle-blowing Policy and Procedures. However, later during August and September 2011 the Council's Monitoring Officer did receive a series of written whistle-blowing allegations, one of which related to the sale of the Yellow Land.

Conclusions

77. In our opinion the Council's failure to comply with section 123 of the Local Government Act 1972 in the sale of the Yellow Land is a serious matter. On the face of it, by instructing the Head of CB Property to sell the land with no restrictive covenant or other mechanism in place to protect the Council's interests, the former Chief Executive may have caused a loss to the Council of between £4.2 million and £9.5 million.

78. The Council should:

Recommendations

R5 Assess the legal implications of the potential breach of section 123 of the Local Government Act 1972.

R6 Review the operation of whistle-blowing arrangements to ensure staff feel confident to use them.

Failure to comply with Council policies and procedures

79. The Council failed to comply with its own approved policies and procedures. Examples are outlined below for each of the projects.

The Cube

80. In March 2008 the Council received an additional fee claim in relation to the Corby Cube project. There was no provision for this in the Council's budget, so OCPC agreed in July 2008 that £0.5 million be added to the budget in respect of this, "if required following negotiation". The increase in budget was sought to avoid officers having to come back to the Committee again in reaching a settlement. As noted in the Council's Scrutiny Review of the Cube this brought the total of the approved budget to £34.834 million.

81. In September 2009, the next time an increase in the total budget was approved, it was reported that the previously approved budget before the meeting was £35.812. Thus the "approved" budget for the Cube increased by £978,000 between July 2008 and September 2009 without reference to OCPC.

82. The Council's own budget approval requirements had been breached to the extent that £0.978 million of the budget had never been approved by OCPC.

83. The September 2009 OCPC meeting resolved to increase the budget to £38.113 million which included within it an enhanced provision of £900,000 for the settlement of the fee claim.

84. On 23 October 2009 the former Chief Executive then went on to settle the fee claim for £900,000 without further reference back to OCPC. When he did so he understood he was acting on the delegated authority granted in July 2008, which he understood to have been increased to £900,000 in the September 2009 meeting. It is though unclear whether he did have the necessary authority to settle the claim as:

a) There is no reference in the minutes or report at the September 2009 meeting as to whether the second budget increase from £500,000 to £900,000 was also to avoid the need to report back to OCPC before agreeing a settlement;

b) The September OCPC meeting only agreed to "note" the ongoing fee claim negotiations, not to agree to settle;

c) The Council's scheme of delegation requires Committee approval for all claims over £100k; and

d) Whilst not constituted as a decision making body the 21 October 2009 Cube Board meeting discussed the fee claim in private session but no mention of agreement to settle is made in the board minutes.

Sale of the Yellow Land

85. Under the Council's Scheme of Delegation "any officer exercising a function under delegated powers shall do so in accordance with the policies and procedures of the Council except in an emergency". The Chief Executive is allowed to take urgent decisions between Committee meetings in consultation "if reasonably possible" with the Council Leader and opposition group leaders. That is subject to a requirement to report back to Members through Committee at the first available opportunity.

86. At the time of the sale of the Yellow Land it was Council policy that any proposed disposal at undervalue up to £2 million had to be reported to OCPC for a decision. The requirement for OCPC approval of undervalue sales is not, however, included in key procedural documentation. When interviewed the former Chief Executive said that he was unaware of the requirement to report undervalue sales to OCPC for a decision, although the Head of CB Property had previously emailed the Chief Executive advising that officers would be acting outside Committee authority if they sold the land on the proposed terms.

87. Contracts were exchanged in relation to the sale of the Yellow Land in August 2009 and the sale completed in March 2010. Members had previously taken Committee decisions to:

- enter into separate option agreements for the Blue and Yellow Land;
- buy the Council out of the Blue Land option agreement; and
- revise (but retain) the Yellow Land option agreement.

88. In our view:

- reservations expressed by the Head of CB Property about a potential undervalue sale of the Yellow Land should have triggered consideration by members in line with Council policy. That did not happen. Instead contracts were exchanged on the instruction of the then Chief Executive; and
- the setting aside of the Yellow Land option agreement departed from Council policy. However, it was not "urgent", nor was the sale reported back to Committee.

Kingswood

89. In June and December 2009 OCPC gave approval for the Council to:

- create a £10 million "clearing fund" to buy any unsold properties at the end of the development at 70% of their value; and
- act as financial guarantor by using the £10 million "clearing fund" to step in should the developer default.

90. In March 2010 the Council signed a separate project management agreement with the developer. Unlike the proposals agreed at the December 2009 OCPC meeting, the agreement included a clause allowing a "work in progress facility to be made available by the Council to the Project Manager to facilitate the development in the sum of £10 million". The £10 million facility would be available to the project manager "throughout the development" not just in the event of default.

91. Once construction work started, the Council funded all development costs as they were incurred rather than merely acting as a financial guarantor. In reality, although the developer was initially funding the construction, marketing and other costs of the development, it was then invoicing the Council for them as they were incurred. That was contrary to the approvals given by OCPC. It was exacerbated by lack of scrutiny of costs before payments were authorised, with possible examples of duplicate payments and payment of costs not related to the scheme.

92. The 2010/11 budget and capital programme agreed by full Council in February 2010 did not include any expenditure on the Kingswood scheme. However, the first budget monitoring report of 2010/11, reported to OCPC in August 2010, included an additional £10 million in the approved budget column of the monitoring report. There is no evidence of OCPC approving the addition of that £10 million which, contrary to earlier reports, was being used to fund the development.

93. In our view the way the Kingswood scheme operated was contrary to what members had agreed and exposed the Council to additional risk.

Rockingham Triangle

94. Although, under the Council's Scheme of Delegation, the Chief Executive is allowed to take urgent decisions between Committee meetings, he is required to report back to members through Committee at the first available opportunity.

95. Under the Council's Contract Procedure Rules any contract between £10,000 and £100,000 must be signed by two officers of the Council, one of whom must be the Head of Legal and Democratic Services.

96. In 2009 the then Chief Executive was asked if the Council would act as guarantor for a £60,000 loan to Corby Town Football Club. He agreed to do so by letter dated 2 December 2009. He and the then Council Leader signed a Deed of Guarantee on 25 February 2010. Their action was not reported back to Committee. The former Chief Executive told the previous auditor that this was not an isolated incident and that reporting back had not always happened over a period of several years.

97. In our opinion the decision to sign the loan guarantee breached a number of Council procedures. It was not sufficiently urgent to be covered by the scheme of delegation. Even if it had been, it was not reported back as required and so other officers and Council members appear to have been unaware it existed. Finally the Deed of Guarantee lacked the signature of the Head of Legal and Democratic Services.

98. The Deed of Guarantee exposed the Council to risk, although at the time of writing no call has been made under it.

99. The Council's arrangements for reviewing prospective committee reports include:

- Officer Briefings where financial, legal and other implications are discussed, with input from the S151 and monitoring officers; and
- Member Briefings with the Committee Chair or Vice-chair.

100. The former Corporate Director (Resources), who left the Council in July 2009, stated in interview that he did not have sufficient opportunity to review some committee reports about Rockingham Triangle, as some reports, particularly those written by the former Chief Executive were not available in full for these briefings. The former Head of Legal and Democratic Services told us in his response to the draft report that he concurred with this view, but the former Chief Executive felt the reporting process for Rockingham Triangle was robust and rigorous including reports to the Lead Members Group. One example of late circulation of reports can be corroborated, in that the minutes of the OCPC meeting on 22 July 2008 record members' disquiet that a Rockingham Triangle report had only been sent out by email the day before, with paper copies only received on the day.

Conclusions

101. We have identified various breaches of Council procedures and departures from approved decisions. Some cases may point to management override of or disregard for controls, rather than oversight. Any one of these would be cause for concern, but the fact that there are so many heightens the importance of the Council taking action to strengthen its processes for ensuring compliance.

102. The Council should:

Recommendations

R7 Take steps to strengthen compliance with its own governance procedures by raising awareness of governance arrangements in both members and officers.

R8 Ensure all key governance arrangements are properly documented in one place to improve awareness of them.

Financial management

103. This section looks at the Council's financial management in sections about its management of financial risk and financial reporting.

Managing financial risk

104. We have identified a number of instances where the Council has not put in place proper arrangements to identify and manage its financial risks.

- **Cube:** when the partners agreed a revised budget in 2006, the Council's contribution was £11.9 million. However, the partners' contributions were fixed, so the Council alone bore the risk of any overspend. After the former Corporate Director (Resources) left the Council in July 2009, the Head of Financial Services attended the Project Board regularly until December 2009. Thereafter he attended infrequently. The Finance Department was not routinely represented as costs escalated and the final cost to the Council reached £24.6 million.
- **Kingswood:** until August 2011 senior finance staff had had little or no involvement in the Kingswood project. The external auditor recommended the then Head of Financial Services should ensure its financial implications were fully evaluated, reported to members and built into the MTFS. The funding agreement between the Homes and Communities Agency, the developer and the Council clarified how, if sales income was less than budget or expenditure greater than budget, any net overspend would be borne by the Council who bore all the downside risk. This was not reported to members.

In January 2012 the auditor reported additional concerns including that:

- other details of the Council's operational involvement in the scheme, the progress against the plan and the latest financial position had not been reported to members;
- reports to members, when making the decision to enter into the scheme, took no account of the cost to the Council of donating land, valued at over £3.0 million in its accounts, to the scheme. This was again omitted from the most recent report to OCPC in June 2012; and
- there was a lack of formalised management arrangements and clarity over roles and responsibilities.

- **Rockingham Triangle:** was the subject of several reports to Committee. The former Corporate Director (Resources) felt that he could not always have sufficient input to those reports as they were produced later than was normal. The then Head of Financial Services (now the Director of Corporate Services) told us finance staff were not sufficiently involved in Rockingham Triangle finances and that as a consequence financial summaries of the project were either omitted or insufficient. He also said "it was impossible to tie [the ex Chief Executive] down to a discussion about the figures once the project started". The ex Chief Executive told us that the reporting process was robust and rigorous including submitting draft reports to the Leaders' Group. In July 2009 OCPC approved a capital allocation for the project of £1.527 million, net of external contributions. The report clearly identifies further external funding contributions of £1,060 bringing the total identified funding to £2.587 million, but is unclear how the difference between this and the reported gross cost of the scheme at £3.519 million (£932,000) was to be bridged and any associated risks. The report also stated that:
  - the Stadium cost of £1.06 million was "capped" and "any costs in excess of this would need to be met by the Football Club"; and
  - a five year sponsorship package for the new stadium of £50,000 per annum would be used to offset borrowing costs.

  In the event, neither contribution materialised.

Financial reporting

105. We have identified a number of shortcomings affecting reporting to the Cube Project Board and to OCPC.

- Early financial reporting to the Cube Board was on the basis of the construction costs alone.
- Board minutes contain various comments about the need to improve cost reports. However, it was not until the Board meeting in February 2009 that any real note of concern was apparent, with reference to an anticipated project overspend of £2.5 million. That triggered the one-off Executive Finance Meeting in March 2009 "to ensure that CBC are aware of the current financial position of the Corby Cube". The Head of Special Projects reported a forecast out-turn for the whole project of £38.073 million against a budget (source unknown) of £35.766 million.
- From September 2009 the Board received a report at project level which variously included some combination of minimum, likely and maximum outturn, but rarely all three.
- Even when the minimum or best case forecast exceeded the approved budget allocation that did not trigger a report to OCPC because, it appears, the budget had not been exceeded in terms of payments actually made. This meant that OCPC and members generally were not alerted to adverse forecasts at the earliest opportunity.
- Board minutes from September 2010 record a discussion in which the then Chief Executive apparently argued for a prolonged approach to settling the construction contractor's final account, at least partly on the basis that a further overspend need not be reported to OCPC until after the May 2011 elections.
- OCPC received regular capital programme monitoring reports for the Council as a whole which, as they only included spend in the current financial year, presented a confused picture for capital projects spanning two or more years. By way of illustration:

- the January 2011 Cube Board meeting heard that the forecast "likely" outturn as at December 2010 was £43.986 million compared to the approved project budget of £41.812 million – a forecast overspend of £2.174 million; but
- the February 2011 OCPC meeting was told, also as at December 2010, that the budget for the Cube was £9.309 million, expenditure to date £7.184 million and forecast outturn £9.309 million.

- There is evidence in emails between the Head of Special Projects and the Director of Corporate Services during February 2011 which reveal their uncertainty over the Cube financial position at that time.
- OCPC received ad hoc requests for additional budget. On such a high risk, high value project as the Cube such reports were too infrequent and too late to keep members adequately informed. For example, there were no such reports to OCPC between April 2010 and June 2011, but during that period the project requirement increased from the approved level of £41.6 million to £47.1 million. Similarly in February 2012, the Council's own Cube Scrutiny Review report indicated a likely outturn for the Cube of £47.5 million, but OCPC only received a report requesting additional budget to cover this in July 2012.

106. Similarly, it was only in July 2012 that the full extent of overspend on Rockingham Triangle was reported to OCPC – £729,000 on the football stadium and £27,000 on tennis facilities – despite the fact that the stadium was completed in May 2011. The capital monitoring reports and, as for the Cube, failed to flag up an emerging overspend due to an apparent lack of clarity over the approved budget.

Conclusions

107. We have identified a number of financial management weaknesses, some of which are common to more than one of the schemes.

- Insufficient involvement of senior finance officers in major projects.
- Failure to draw significant financial risks to members' attention.
- Reliance on external contributions which were not assured and did not materialise.
- Inadequate financial reporting to the Cube Board.
- Financial reporting to OCPC on the Cube was not routine, consisting only of ad hoc requests for additional budget which were too infrequent and too late to be effective.
- Routine monitoring reports to OCPC on the capital programme failed to adequately alert members to emerging, major overspends. This was also a weakness identified by the LGA's recent financial health review of the Council, on which the Council has already taken action.

108. The Council should:

Recommendations

R9 Review arrangements for assessing financial risks, including the early involvement of finance staff.

R10 Strengthen arrangements monitoring and reporting expenditure against budget in respect of major capital projects.

Project management of the Cube

109. The Cube was the biggest and most ambitious capital project undertaken by the Council, so much so that it was outside the normal experience of most district councils. In that context, the Council appointed external specialists to help provide project management capacity to the Project Board whose role included the "overall management and control of the project within the remit set by Stakeholder Governing Structures and the Parklands Gateway Steering Group".

110. By late 2005 it was already apparent there were significant cost pressures on the Cube project. In January 2006 the Design Team, in responding to the brief, presented a report which exceeded the budget then available at £27.5 million. Even when a revised report was approved by the Board in May 2006, the cost was £31.125 million. This was arguably the first opportunity that the Council, who bore the financial risk, and its partners had to step back and subject its ambitious concept to a fundamental review.

111. The Council's application for Growth Area Fund (GAF) grant was confirmed in November 2006. A condition of the £9 million grant was that it had to be spent by 31 March 2008. Any unspent grant would be lost.

112. The Council allowed that grant condition to become the major driver for the Cube project for the next 17 months. For example:

- The Council awarded a £1.056 million enabling works contract to bring spend forward. It ultimately cost the Council £1.932 million. The former Head of Special Projects told the previous auditor the Council "included anything that [the contractor] could do in order to incur spend. It felt like CBC just wanted to get money out of the door without regard to value for money"; and
- despite independently verified concerns that the Board had about the readiness of design work, including in June 2007 that the design had not been completed sufficiently to go out to tender. We could not find any evidence that the Board had satisfied itself that those concerns had been addressed before tender documents were issued to six interested contractors later that month.

113. All four returned tenders, ranging from £26.7 to £32.5 million exceeded the £24.3 million pre-tender estimate. The Council was quickly reduced to dealing with one contractor, whose corrected tender was £28.95 million.

114. After extended negotiations to bridge the gap, a contract for £27.122 million was signed in January 2008. It had been necessary to incorporate £1.673 million of "firm" and £1.429 million of "budgeted" savings.

115. The Project Board had expressed concerns about the proposed form of building contract for more than two years. These included lack of full compatibility with the existing contract with the Design Team and the extent of design work the construction contractor would be responsible for. Such issues were not fully resolved when the contract was awarded.

- "Scope gaps" remained – that is work that featured in neither contract.
- Disagreement between the Council and the design team persisted over "contractor designed portions".
- There was a robust exchange of correspondence between the Design Team and Council in the weeks after the contract was signed.

116. The Project Board met throughout the construction period. Board minutes reveal there were serious concerns about:

- the adequacy of the project contingency which had been reduced during tender negotiations;
- disagreement over the extent to which the "firm" and "budgeted" savings were being realised;
- poor relations between the Design Team and construction contractor, including disagreement over completeness of the design;
- performance of the Design Team and construction contractor;
- the impact of "scope gaps";
- tension between increasing costs and the aim of delivering an "iconic" building; and
- the building not being watertight from August 2009 onwards.

117. Few, if any, of those issues were ever satisfactorily resolved. For example, final analysis in June 2011 by the Council found that: £725,000 of value engineering savings were not realised; resolving uncertainties over scope added a further £2.865 million to the construction final account; and delays eventually saw the Cube open nine months later than planned when construction began.

118. At the time of writing, it is still possible that further expenditure will be required to make the roof watertight. The Council has yet to close the project in other respects – the building has yet to receive a Building Regulations certificate, there are no clear plans for future use of the fourth floor restaurant area and the ground floor café/bistro has not yet been let but is under offer.

Conclusions

119. The Project Board failed to fulfil its remit for the "overall management and control of the project".

120. The Board missed opportunities to step back from the project and subject its ambitions to fundamental review. Instead it allowed the "imperative" of securing the £9 million GAF grant to drive the project. This contributed significantly to the £15 million overspend on the project. Once the construction contract was signed, there was no turning back, but the Board collectively failed to deal with serious concerns as they arose. The relationship between the Design Team and the construction contractor was not managed effectively by the Council, nor was their performance. The building was delivered late, over budget and not to the standards originally intended.

121. The Council should:

Recommendations

R11 Review the membership of present and future project boards to ensure appropriate member and officer involvement.

R12 Subject major projects to systematic review to ensure that they remain realistic, affordable and command informed member support.

R13 Strengthen arrangements for managing contractual relationships and contractors' performance.

Use of professional advice

122. This section outlines situations in which the Council either failed to obtain advice or failed to respond appropriately to advice it did obtain.

Failure to seek advice

123. The then Chief Executive instructed the Head of CB Property to sell the Yellow Land to Greatline with no restrictive covenant or overage clause to protect its interests despite the latter raising concerns that it was being sold at an undervalue. This was done without obtaining:

- independent legal advice on the sale or even involving its in-house legal team (other than for conveyancing); or
- independent valuation advice on the potential value to the Council of the overage clause in the option agreement which was waived as part of the disposal.

124. In October 2010, immediately prior to the sale of the Blue Land, the Council did seek the advice of Counsel on that disposal. It was based on joint instructions with the purchaser. In his draft instructions the Head of Legal and Democratic Services included a retrospective request for advice on the Yellow Land sale, completed six months earlier. We do not know why he did so as he declined to be interviewed or answer questions, but did send in comments having seen the draft report. The purchaser's solicitors were allowed to edit the draft instructions and made what appear to be significant changes.

125. The resulting legal advice was clear and positive in relation to the proposed Blue Land sale, but less convincing in respect of the Yellow Land. On the basis of written instructions Counsel had seen limited, incomplete and inaccurate information about the Yellow Land sale, in light of which he primarily concluded that passage of time meant the disposal could no longer be subject to legal challenge. In particular it appears from the written instructions that it was not brought to the Counsel's attention that the nil valuation by the HCA was on the basis of proposed mixed industrial use of the land when it had in fact become apparent to the Council at the time of sale that the purchaser was proposing retail use. Had the QC been aware of this, it would unquestionably have been relevant to his overall opinion and have required express consideration in the legal advice.

126. In our opinion, legal advice on the Yellow Land sale should have been sought by the Council before contracts were exchanged and should have been an independent instruction, not jointly with the purchaser.

127. When the Council contributed land to the Kingswood housing scheme at nil cost, no valuation was obtained specifically for the purpose of including it in the development although the land was valued at over £3.0 million in the Council's Annual Accounts. No valuation has been attributed to the land in reports to members, from when key decisions about the Kingswood scheme were made by OCPC in June 2009.

128. In February 2010 the former Chief Executive and Council Leader signed a Deed of Guarantee in respect of a £60,000 loan from a brewery to Corby Town Football Club. The Deed of Guarantee specifically warned that "This is a formal document intended to create legal right and obligations. You are advised to take legal advice before signing it". Neither signatory was legally qualified, but both appear to have signed for the Council without obtaining in-house or external legal advice.

129. We have already outlined at paragraphs 32 and 33 the circumstances in which the former Chief Executive left his post in March 2012. The previous auditor discussed with the Acting Chief Executive how the Council managed aspects of agreeing the departure of the former Chief Executive which, whilst not necessarily rendering the decision invalid or unlawful, show the process could have been handled more robustly, despite having sought and acted on external professional advice. It has potentially left the Council in a weaker position in the light of other conclusions in this report.

130. In particular the compromise agreement included a clause whereby the Council agreed not to bring any further grievances or complaints against the former Chief Executive. Officers requested and got advice that confirmed this clause meant the Council could not bring grievances against him during the period of secondment.

131. While such clauses in compromise agreements are not uncommon, it is usual for the termination of employment to take place on the date the agreement is signed. We have seen no evidence the Council considered, or took specific advice on, any alternative wording to the clause, for example to limit the clause to specified claims, given the unusual feature of the secondment period included in this particular agreement.

Failure to follow advice and document why

132. The Head of CB Property (the Council's senior property officer and a chartered surveyor) advised the then Chief Executive in writing on at least two occasions that the Council should not sell the Yellow Land with no restriction or overage clause to protect the Council's interest. The former Chief Executive over-ruled that advice and instructed him to complete the sale.

133. There is a further instance in relation to the Cube project where independent advice was obtained, but not acted upon. In addition the reasons for not following the advice are not clearly recorded. This relates to the former Chief Executive settling an additional fee claim in relation to the Corby Cube development in October 2009, despite senior officers having obtained specialist advice from construction economists in April and May 2008 and independent legal advice in October 2009. The consistent advice received was that the claim had not been properly substantiated and should therefore not be settled at that stage by the Council. The nature of the advice received was not put before OCPC when it agreed to an increased budget covering the settlement of this claim.

134. Separate from the above an independent design audit report was commissioned by the Board which concluded "I would advise the [Council] to not accept the submitted information as fulfilling the requirement of a Stage E report". The Board subsequently received assurances from the Design Team that all the recommendations from the audit report had been actioned, but there is no evidence in the board minutes as to how the Board assured itself this was the case. The Board never explicitly approved Stage E, but by implication accepted it by progressing to later stages and going out to tender.

Conclusions

135. It is not prescribed when specialist advice should be sought or that advice received must be followed. However, failure to obtain appropriate advice or to follow such advice should not be commonplace. We are concerned at the number of occasions on which advice has not been:

- sought by the Council;
- obtained at the most appropriate time;
- specific to the Council's interests; or
- followed without a properly documented, transparent reason.

136. The Council should:

Recommendations

R14 Strengthen arrangements for ensuring that, where appropriate, independent specialist advice is obtained on a timely basis.

R15 Ensure professional advice is evaluated and either followed in the Council's interests or, if not, that reasons for departing from it are recorded.

Actions of senior officers

137. The Council has an Officers' Code of Conduct which lays down expectations on officers including, for example:

- giving 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;
- reporting to their own manager or any other appropriate senior manager any breach of procedure; and
- serving the Council as a whole, so they must serve all councillors and not just those of the controlling group.

138. In addition three senior posts have statutory duties to fulfil.

- The Head of Paid Service has responsibility for the management and coordination of the Council. At Corby this is the Chief Executive.
- The Monitoring Officer has a key role to ensure the Council, its officers and its members maintain the highest standards of conduct. This includes a duty to report on matters the Monitoring Officer believes are, or are likely to be, unlawful or amount to maladministration. At Corby this was the Head of Legal and Democratic Services until April 2011, when it became the Democratic Services Manager following a restructuring exercise.
- The Section 151 Officer is responsible for the proper administration of financial affairs, recognising that councils owe a fiduciary duty to council taxpayers. This includes a duty to report to all members if there is or is likely to be unlawful expenditure or an unbalanced budget. At Corby this is the Director of Corporate Services.

139. The three statutory officers' prime responsibility, individually and jointly, is to ensure the good governance of the Council. We comment on each of the roles below.

The Chief Executive

140. The former Chief Executive was in post throughout the period of events covered by this report. As the Council's most senior employee, he must share responsibility where things have gone wrong. However, in addition to that overall responsibility, there are instances where, in our view, his conduct fell short of expectations.

141. For example the former Chief Executive in our view failed to uphold the Council's fiduciary duty to council tax payers when he instructed the Head of CB Property to sell the Yellow Land without restriction. In this case he seems to have afforded more importance to the relationship with a third party than to the need to protect the Council's and tax payers' interests.

142. Another example is that the Chief Executive at the time made comments in a Corby Cube Liaison Meeting which gave the impression that he did not serve the Council as a whole. Minutes from the September 2010 meeting record that:

"CM [the Council's Chief Executive] very concerned about the political situation at CBC currently. The Tories will use any overspend as ammunition to shoot down the Labour party. The timing of the local elections in May 2011 is critical."

143. When interviewed the former Chief Executive acknowledged that "on reflection, the use of words was inappropriate". He said there was no suppression of financial information for political purposes, but the next request to OCPC for additional budget was not until June 2011 – 14 months after the previous one and one month after the local elections.

The Monitoring Officer

144. The Council has had two Monitoring Officers during the period covered by this report. Since the departure of the former Head of Legal and Democratic Services (who declined to participate in this review) in April 2011, responsibility has rested with the Democratic Services Manager.

145. In May 2009 the Head of CB Property wrote a memorandum in such a way as to try to subtly raise the Head of Legal and Democratic Services' concern about the Yellow Land sale. It set out the proposed use and sale price but was not overt about the undervalue. However, the deal went through unchallenged. It is questionable why the Head of CB Property thought that was an appropriate way to deal with the matter, rather than explicitly bringing what he believed to be an unlawful sale to the Monitoring Officer's attention. It is also questionable why it was another 17 months before the Monitoring Officer sought legal advice on that sale – 14 months after contracts were exchanged and more than six months after completion.

146. It is acknowledged that at the time the Council was dealing with the High Court case into contaminated land reclamation and that this would have been a significant priority for the Head of Legal and Democratic Services. It is likely it took up a lot of his time. If that was the case however he and the Council should have ensured arrangements were in place to ensure other critical legal issues were not missed.

147. The Head of Legal and Democratic Services was not at the meeting in September 2010 when the then Chief Executive made what appeared to be politically motivated arguments for delaying reports of any overspend on the Cube. We do not know if these comments were brought to his attention, but consideration of such conduct clearly falls within the Monitoring Officer's remit.

148. In June 2011, faced with a £15 million overspend against the original Cube budget, OCPC commissioned a review to "understand where processes had gone wrong". Following agreement by the full Council, a cross party working group reporting to the Overview and Scrutiny Panel was established.

149. An officer was identified to lead and support the Scrutiny Review. During the scoping stages of the Review, that officer made written allegations to the Democratic Services Manager about the conduct of the Council's former Chief Executive who was a key player in the Cube project. It would still have been possible to substitute a new lead officer at that stage, but no action was taken by the Democratic Services Manager. We do not wishing to impugn the integrity or professionalism of the lead officer and are not suggesting that the Scrutiny Review is biased. However, it was inevitable that lead officer's continued involvement in the Scrutiny Review would leave it open to suggestions of bias. This has proved to be the case.

The Section 151 Officer

150. The Council had two Section 151 officers during the period covered by this report – the former left the Council in July 2009, following a period of sickness absence, while the latter acted up from around that time until being appointed as the current Director of Corporate Services in April 2011.

151. The current Director of Corporate Services was in place for the latter half of the CUBE project. When interviewed, he stressed the difficult relationship that he had with the former Chief Executive and how, as an inexperienced Section 151 officer, he had been uncertain of his ground.

152. In particular he was asked about an exchange of emails he had with the Head of Special Projects in February 2011 in which he wrote:

"I think what you are saying is that all of the budget is now spent. This raises 2 points/issues.

1. Why has it taken to now for us to be aware of this, when the budget monitoring at the end of December showed an actual underspend to date of £2.1m, and

2. more importantly, you have no authority to spend beyond the budgeted amount without committee approval. Expenditure of this magnitude is effectively illegal spend and therefore all expenditure must stop or an increased budget needs to be approved.

I will obviously speak to [the Chief Executive/Deputy Leader and Leader] to agree a way forward."
He also added that the former Chief Executive and Head of Special Projects could not agree on the extent of any overspend.

153. Both the Chief Executive and the Director of Corporate Services were aware of the potential overspend, but this was only rectified in June 2011 when, following the cancellation of the May meeting, OCPC approved an additional £5.5 million for the Cube project. A likely "variation" against budget was referred to in the February 2011 overall budget monitoring report to OCPC, but in our view this was inadequate in the circumstances. The Council's own scrutiny review has already concluded that

" alleged intimidation of senior officers was" one of the key factors **"in the Council losing control of the project"** and that **"at all material times the outturn costs were running ahead of budget but the position was veiled from the Council corporate; the S151 officer should have been more forceful"**. Whilst we recognise that his post was potentially at risk at that time through a proposed restructuring exercise, in our view, in this case, the Director of Corporate Services allowed his position to be compromised. As a result of this important information was not put in front of members for several months.

154. We have commented previously that the current Director of Corporate Services played a reduced part in the Cube Board after December 2009. When interviewed he said another senior officer had "stopped going to the Cube Board meetings because they were a "waste of time"", and that he "agrees with that opinion". The more regular presence of the Council's most senior finance officer at those meetings should have provided the opportunity to avoid some of the failings which subsequently transpired.

The Monitoring and Section 151 officers

155. In June 2011 following the concerns about the Kingswood scheme raised by the previous auditor in his 2010/11 audit the Council formed a group of officers to strengthen the Council's management of the Kingswood scheme.

156. In July 2011 an officer in that review group raised concerns with all three statutory officers about a possible breach of the provisions of the grant funding agreement or the development contract which the Council had signed up to. In August 2011 the individual asked the Section 151 and Monitoring Officers to advise the then Chief Executive and himself on the concern he had raised. Later in August the then Chief Executive responded to the individual recognising his concerns, but concluding that no action needed to be taken. There was no evidence of a response from the other statutory officers at the time.

157. During 2012 the auditor continued to raise the same issue with the S151 Officer. At the time of writing it is unclear whether any of the statutory officers has satisfactorily resolved the matter. Any remaining uncertainty should be dealt with as part of the Council's response to the recommendation from its own review that it should obtain legal advice in relation to the Kingswood Project Management Agreement and the Tri-Partite Funding Agreement.

Conclusions

158. This review has identified concerns about the actions, or inactions, of all three statutory officers. In particular:

- the former Chief Executive's role in the Yellow Land sale in our view paid insufficient regard to the Council's fiduciary duty to council taxpayers;
- the current Director of Corporate Services allowed his position to be compromised by delaying reporting an overspend to OCPC which he perceived to be "effectively illegal spend"; and
- the former Monitoring Officer was not sufficiently engaged, at the right time, in the sale of the Yellow Land to recognise its potential legal risks.

159. In drawing this conclusion we acknowledge that the LGA review of financial health recently commissioned by the Council has drawn similar conclusions, and that the Council has since made external support available to the Director of Corporate Services to strengthen the Section 151 role.

160. The Council should:

Recommendations

R16 Review the arrangements for the effective discharge by the Section 151 Officer and the Monitoring Officer of their statutory duties.

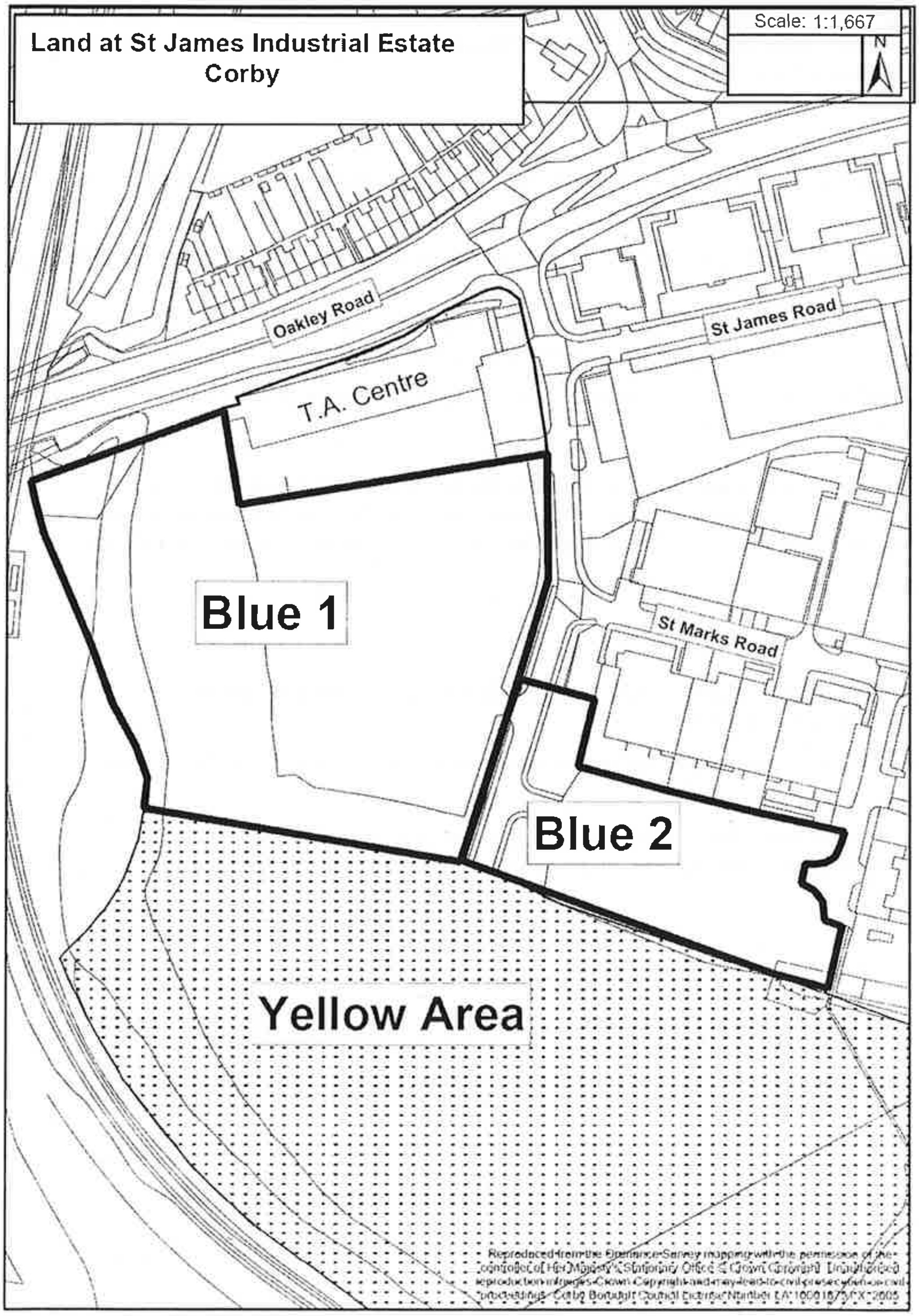
R17 Assess whether any further action, supportive or otherwise, needs to be taken in respect of the current statutory officers.

R18 Resolve the remaining uncertainty about any financial impact arising from the possible breach of the Kingswood funding or project management agreement.

Appendix 1 The Council's land at St James

Map of St James, Corby

For the purposes of this report the "Blue Land" equates to "Blue 1" on the plan below. The "Yellow Land" comprises the "Yellow Area" and "Blue 2".



Appendix 2 Summary of Recommendations

Governance arrangements

R1 Strengthen member contribution to and clarify arrangements for making decisions for major regeneration projects, particularly those carried out in partnership.

R2 Ensure that decisions are properly supported in minutes or officer decision records as appropriate.

R3 Strengthen arrangements for member scrutiny, including holding officers to account, building on the action being taken in response to the LGA recommendation.

R4 Build on the member training assessment to ensure individual members develop the skills necessary to ensure effective engagement on behalf of the Council on partnership bodies.

Breach of statutory obligations

R5 Assess the legal implications of the potential breach of Section 123 of the Local Government Act 1972.

R6 Review the operation of whistle-blowing arrangements to ensure staff feel confident to use them.

Failure to comply with Council policies and procedures

R7 Take steps to strengthen compliance with its own governance procedures by raising awareness of governance arrangements in both members and officers.

R8 Ensure all key governance arrangements are properly documented in one place to improve awareness of them.

Financial management

R9 Review arrangements for assessing financial risks, including the early involvement of finance staff.

R10 Strengthen arrangements for monitoring and reporting expenditure against budget in respect of major capital projects.

Project Management of the Cube

R11 Review the membership of present and future project boards to ensure appropriate member and officer involvement.

R12 Subject major projects to systematic review to ensure that they remain realistic, affordable and command informed member support.

R13 Strengthen arrangements for managing contractual relationships and contractors' performance.

Use of professional advice

R14 Strengthen arrangements for ensuring that, where appropriate, independent specialist advice is obtained on a timely basis.

R15 Ensure professional advice is evaluated and either followed in the Council's interests or, if not, that reasons for departing from it are recorded.

Actions of senior officers

R16 Review the arrangements for the effective discharge by the Chief Financial Officer and the Monitoring Officer of their statutory officers.

R17 Assess whether any further action, supportive or otherwise, needs to be taken in respect of the current statutory officers.

R18 Resolve any remaining uncertainty arising from any possible breach of the Kingswood funding or project management agreement.

Appendix 3 Interviewees

Key individuals interviewed

Current Councillors and Officers

Councillor Pengelly
Councillor Butcher
Acting Chief Executive
Director of Corporate Services
Democratic Services Manager
Head of CB Property

Officers no longer working at the Council

Ex Chief Executive
Former Corporate Director (Resources)
Former Head of Special Projects

The ex Head of Legal and Democratic Services declined to be interviewed but made comments after having seen a draft copy of the report.

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