

# Report

on an investigation into  
complaint no 09 016 788 against  
London Borough of Merton

16 February 2011

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<b>Table of Contents</b>	<b>Page</b>
<b>Report summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Legal and administrative background</b>	<b>3</b>
<b>Investigation</b>	<b>4</b>
2003	4
2004	4
2005	5
2006	6
2007	7
2008	8
2009	9
<b>The Council's view</b>	<b>10</b>
<b>The view of the Residents' Association</b>	<b>11</b>
<b>Conclusions</b>	<b>11</b>
<b>Exercise of my discretion to consider events dating back to 2003</b>	<b>11</b>
<b>The tendering process</b>	<b>12</b>
<b>The sale of the land</b>	<b>12</b>
<b>The injustice suffered by the RA</b>	<b>13</b>
<b>The order in which the Council dealt with the matter</b>	<b>13</b>
<b>The section 106 process</b>	<b>13</b>
<b>'Ring-fencing' of the sale proceeds</b>	<b>13</b>
<b>Failure to put in place planning and contractual safeguards</b>	<b>14</b>
<b>Finding</b>	<b>15</b>
<b>Remedy</b>	<b>15</b>

**The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.**

## **Key to names used**

Mr Russell	the complainant
Mr Stuart	the person who submitted the complaint on behalf of the Residents' Association
Mr Z	a developer
Officer A	an estates officer
Officer B	a senior lawyer
Officer C	a senior property management officer

## **Report summary**

### **Subject**

In 2003 the Council decided that a community hall was surplus to its requirements. The Council proposed to make use of the capital value of the land to provide community facilities within a redeveloped site. The Residents' Association complains that there was maladministration by the Council in the way that it then dealt with the project.

In July 2004 the Council's cabinet resolved that the site be disposed of by tender subject to the requirements set out in a planning brief and that a community trust would manage the facility. The cabinet did not commit the Council to meeting any future capital or revenue costs of the project. Tenders were received in October 2004. The Council's partnership with the first and second of the original bidders did not progress as originally anticipated. In December 2005 the Council informed a third developer, Mr Z, it was prepared to consider proceeding with his offer.

A draft contract and lease was issued by the Council in March 2006. A detailed planning application was submitted in August 2006. In April 2007 the Council's planning committee resolved that planning permission be granted subject to the completion of a section 106 agreement. One of the terms of that agreement was that the development should be car-free. In April 2007 the Council informed Mr Z's company that the purchase price would be increased. A draft section 106 agreement was sent to Mr Z's solicitor on 11 June 2007.

A revised draft contract and lease was sent to Mr Z's solicitors in January 2008 and exchange of contracts took place in March 2008, completion following in May 2008. A term of the sale was that the development works had to be completed within 48 weeks of the sale. An application to relax the car-free requirement of the scheme was refused by the Council. In December 2008 Mr Z's company sought financial support from the Council to enable the scheme to go ahead. The Council did not agree. Planning permission was granted on 3 December 2009 immediately upon completion of the section 106 agreement. The Council can take action against the developer if the development is not completed by May 2012.

### **Finding**

Maladministration causing injustice

### **Recommended remedy**

The Council should make a payment of £1,500 to the Residents' Association.



## **Introduction**

1. Mr Russell, a representative of a Residents' Association, complains that:
  - 1.1 the Council has failed to progress with due care and diligence the sale of the previously existing community hall (the hall) to an approved developer and grant the required detailed planning permission for a mixed development containing a new community facility;
  - 1.2 despite the undertakings to 'ring-fence' and retain the proceeds from the sale of the hall thereby ensuring funds were available for it to be replaced with a similar facility within a new development, the Council has refused to acknowledge any obligation to provide funding;
  - 1.3 the Council has failed to put in place planning and contractual safeguards which would have ensured the existing hall remained available for use until a contract had been entered into by the developer for the construction of the new community facility; and
  - 1.4 the Council has failed to ensure proper provisions were made within the contract with the developer to protect the interests of the community.
2. One of the Commission's officers has examined the Council's files, interviewed officers of the Council and met the complainant and Mr Stuart who put together and submitted the complaint to me on behalf of Mr Russell and the Residents' Association (the RA).

## **Legal and administrative background**

3. The Local Government Act 1974 says that the Ombudsman may investigate complaints of injustice caused by maladministration by the Council. The Act also says that normally the Ombudsman may not investigate a complaint unless it was made to them within 12 months from the day when the complainant first knew something had happened that affected him or her.
4. The 1974 Act also says that the Ombudsman may not question the merits of Council decisions if they have been taken without maladministration.
5. The Local Government Act 1972 General Disposal Consent (England) 2003 enables a Council to dispose of any interest in land for less than the best consideration provided that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of the area and the undervalue does not exceed £2,000,000.

6. Section 106 Town and Country Planning Act 1990 enables anyone with an interest in land to enter into an agreement with the local planning authority. A section 106 agreement cannot be entered into until a developer has acquired an interest in the land concerned.

## **Investigation**

### **2003**

7. In April 2003 the Council decided that the hall was surplus to requirements. There is no evidence of consultation with the RA before this decision was taken. Several meetings between the RA, the leader of the Council and council officers followed that decision. According to the minutes of a meeting with the RA on 1 July 2003, the Leader of the Council said that the Council had agreed to close the hall as a result of a best value report. The RA agreed to supply a business plan to the Council in support of the need and sustainability of a new community facility. A business plan dated 5 November 2003 was submitted by the RA in informal partnership with a developer, Mr Z, and his architects and quantity surveyors.

### **2004**

8. A public meeting was held in June 2004 to discuss the proposals for the development of the hall. That meeting called on

“Merton Council to ensure that the funds from the sale of [the hall] be used solely for a community hall ..., which provides comparable capacity and flexibility of usage. Moreover, any development should address the concerns of local residents relating to the scale and size of any buildings, as well as issues relating to visual intrusion and loss of privacy. To ensure fairness and transparency, the redevelopment proposals should be put out to tender to allow residents to evaluate all available options. The Council should also reinstate the existing hall facility and provide appropriate funding until a final sale of [the hall] is determined.”

9. The borough development plan overview and scrutiny panel discussed the hall at a meeting on 6 July 2004. The panel resolved that the draft planning brief for the site be adopted with three alterations and to incorporate the text of the June 2004 public meeting as set out above into the minutes.
10. The hall was one of the issues considered by the Council’s cabinet on 19 July 2004. The written report to this meeting said that it was proposed to make use of the capital value of the site to provide new community facilities within a redevelopment scheme and to dispose of the site to a private sector developer with a requirement to provide community facilities within the redeveloped site. The report stated that, following consultation on and approval of the brief, the site would be offered for sale by tender which would take about three months. The cabinet resolved that:

- (1) the comments of the borough development plan overview and scrutiny panel on the draft brief for the redevelopment of the [hall] site be agreed and the planning brief, as amended, be formally adopted as supplementary planning guidance to the unitary development plan;
  - (2) the site be disposed of by tender, subject to the requirements set out in the planning brief;
  - (3) a community trust be established between the Council, the developer of the site, the [RA] and others to manage and operate the community facility on the site; and
  - (4) the process adopted for this site be a model for the redevelopment of other community facilities in the borough, subject to a programme to be presented to a future meeting of the cabinet.
11. The cabinet did not commit the Council to meeting any future capital or revenue costs for the project.
  12. In their complaint Mr Russell and Mr Stuart focused in particular on what happened after the Council agreed in July 2004 to dispose of the land on which the hall was situated by tender, subject to the requirements set out in a brief for the redevelopment of the site.
  13. Tenders were received by the Council in October 2004. The bids that offered the community facility were ranked by the Council in order of highest capital receipt. The four highest bids were shortlisted but, shortly after that, the bidder in fourth position was unable to proceed. Mr Z submitted a bid but it was not one of those shortlisted.
  14. On 25 November 2004 the Council wrote to the shortlisted bidders asking them to provide copies of plans by 24 December 2004.

## **2005**

15. Plans were received and considered by the Council's planning officers. A meeting was also held on 14 January 2005 to enable the RA to comment on the proposals in three shortlisted bids. A preferred bid was then identified.
16. A report was prepared for the cabinet portfolio holder seeking authority to sell the site to the preferred bidder or to another named bidder if the sale fell through. The report was approved by the portfolio holder in April 2005. On 4 May the head of legal services was instructed to arrange for the sale of the property and prepare a building agreement. A letter was sent to the successful bidder on 5 May setting out the process for the sale. Further details of the structure of the disposal were sent to the solicitors acting for the successful bidder on 14 June.

17. On 27 June a representative of the preferred bidder confirmed that their bank had indicated that the structure proposed by the Council would give them sufficient security to lend against the land on receipt of detailed planning consent, enabling them to pay for the site. Revised plans were received by the Council on the same date.
18. On 15 July the Council wrote to the preferred bidder to say that the draft agreement for sale would be sent to their solicitors shortly and to set out the main terms of the agreement.
19. In September Mr Z submitted a revised offer for the site.
20. The Council's officers had significant reservations about the preferred bidder's revised plans and in September 2005 the Council asked the developers to revert to the original plans and to confirm the terms of their offer. Those terms were confirmed on 7 October and the developers also confirmed that they remained committed to a successful redevelopment of the site.
21. On 19 October the Council wrote to another of the original bidders (the second developers) setting out the terms on which the site could be offered to them because the partnership with the current bidder was not progressing as anticipated. Following a meeting between the second developer and Council officers on 3 November the Council wrote to the developers on 10 November to confirm that their scheme was broadly compliant with the planning brief and planning policy and that the development had to be car-free.
22. The second developer then indicated that they wished to amend their offer unless the hall requirement was removed or the parking restriction was lifted. The second developers confirmed their revised offer on 12 December.
23. On 16 December 2005 the Council wrote to Mr Z's architects to say that the Council was prepared to consider proceeding with their client's offer.

## **2006**

24. Following a meeting with Council officers, more detailed plans were submitted on 8 February 2006.
25. On 14 February Officer A, a Council estates surveyor, wrote to Mr Z's company confirming that the Council wished to progress the sale and leaseback scheme with them. The RA say that this effectively marked the end of the protracted and inefficient tendering process by the Council.
26. Officer B, a Council property lawyer, wrote to Mr Z's solicitors on 13 March enclosing a draft contract and lease for the disposal of the hall. The solicitors raised a number of enquiries in a letter to Officer B dated 7 April. Officer B



responded to their specific enquiries on 31 May. A draft lease for the community centre was sent to Mr Z's solicitors on 2 June. The RA complain that it took three months for an unsuitable draft contract to be issued to Mr Z's company.

27. A meeting took place between Council officers and the developers on 13 June. Revised plans which included office space were discussed. The planning brief had not included provision for office space. The Council's officers confirmed that the scheme was expected to be car-free.
28. Following the meeting on 13 June, Officer B received further pre-contract enquiries and a revised draft contract during July. In his comments on my draft key facts the solicitor acting for Mr Z at this time says that the Council could then have exchanged contracts with completion taking place after a decision had been made on the planning application.
29. A detailed planning application was submitted in August. Officer A returned the pre-contract enquiries to Officer B on 18 October. On 9 November Mr Z's solicitors wrote to the Council to say that it was important to his client for funding reasons that he would be acquiring the freehold of the new building rather than a lease as had been proposed by the Council.
30. Amended plans were submitted by the developers and the Council carried out further consultation with neighbours and other consultees in December 2006.

## **2007**

31. The developer's solicitor emailed Officer B on 17 January 2007. He said that he had been waiting for months for a response on whether the Council would sell the site freehold. On the same date Officer B informed Mr Z's solicitors by email that her instructing officer had expressed concerns about the possibility of an outright transfer of the freehold. In April the Council's planning committee resolved that planning permission be granted subject to the completion of a section 106 agreement. One of the terms of the agreement was that the development should be 'car free'. Also during April the Council wrote to Mr Z's company notifying them that the required purchase price had increased. The RA query why the Council, after months of inactivity, increased the purchase price to a level over £500,000 higher than the independent valuation they had obtained. According to the Council's files, the Council sought an increase in the purchase price due to the inclusion of a commercial unit in the development that was not part of the initial offer.
32. A senior Council lawyer has provided a chronology of the section 106 agreement process. Legal services received instructions to prepare a section 106 agreement on 30 April and a draft was sent to the planning officer for comments on 21 May. A draft was sent to the applicant's solicitor on 11 June. On 8 October the applicant's solicitors acknowledged receipt of the draft section 106 agreement but said that they were waiting for the draft contract.

33. According to Mr Z the property market peaked in the middle of 2007. In August 2007 he discussed the purchase price and the terms for exchange of contracts with the Council. According to a subsequent email from Officer A, Mr Z said at that meeting that he would not be able to complete before February/March 2008.
34. Officer B revised the draft contract to reflect the change in respect of the planning permission and she received the comments of Mr Z's solicitors on that revised draft on 27 November 2007.
35. On 20 December 2007 Officer B wrote to Mr Z's solicitors to inform them that a revised draft contract would be sent to them. She said that, after much consideration, the Council had agreed to a freehold transfer on the basis that the development works were completed by Mr Z, a leaseback for the community facilities was granted and the Council's position was protected.

## **2008**

36. The draft lease and contract was sent to Mr Z's solicitors on 7 January 2008. Further amendments were suggested by Mr Z's solicitor on 15 January.
37. Exchange of contracts took place on 31 March after several months of negotiation between the Council and the developer regarding the purchase price. This was due to the inclusion in the scheme of a commercial unit which was not part of Mr Z's initial offer. According to an email from Officer A dated 12 March 2008, the additional payment was yet to be agreed and it was impossible to state the amount accurately until the floor plans had been agreed. The RA question why exchange of contracts did not happen sooner.
38. The sale was completed on 31 May. The purchase price was £1,049,750. An important term of the sale was that the development works had to be completed within 48 months.
39. The hall was demolished a few months later and the site has remained in the same state since then. The RA question why the Council did not include contractual provisions within the contract with the developers to enforce completion of the project.
40. Mr Z's solicitor approved the draft section 106 agreement on 2 May 2008 but on 19 May the solicitor asked for the agreement to be placed on hold pending a decision by the Council on whether the requirement that the development should be 'car-free' should be retained.
41. On 12 August 2008 the Council sent a lengthy letter to Mr Z's solicitors explaining why the car-free requirement could not be removed. The application to relax the car-free requirement was considered by the planning applications committee on 11 September and refused.

42. Mr Z's solicitors returned the draft section 106 agreement with amendments on 1 December. On 2 December the developers wrote to the Council seeking a discussion because a number of obstacles to the proposed project had arisen. A meeting took place on 9 December between Mr Z's company and Officer C, a Council manager. Mr Russell also attended that meeting. Mr Z's company sought financial support from the Council to enable the project to be completed. This was because the build costs had increased and the value of the commercial element had reduced. In their comments on my draft key facts the RA say that their understanding is that Mr Z was seeking financial assistance for the increased cost of the community facility element only.

## 2009

43. Officer C wrote to Mr Z's company on 27 January 2009 and he informed them that the Council was not in a position to advance funds which would support the viability of a commercial venture.
44. Mr Z's company replied to Officer C on 12 February. They said that the cost of the development had effectively doubled. As a result their bank had recently indicated that their original offer for the company's loan requirement could no longer be supported in view of the increased costs and the reduction in the expected value of the residential development. They said that the project was essentially a partnership venture between the Council and the developer to ensure that the redevelopment of the site included a replacement community facility for the local residents. Mr Z's company said they believed that the critical factor was the extraordinary time it had taken the Council to bring the project to its current position.
45. Between 10 December 2008 and the end of April 2009 there was internal communication and discussion between Council officers about the section 106 agreement details. The applicant's solicitor sent an amended draft section 106 agreement to the Council on 30 April 2009.
46. There was an exchange of emails between the RA and the leader of the Council in May. The RA wrote to the leader on 25 May and said that his assertion that the majority of the delay was the fault of the developer was unsupported by the facts. The RA expressed hope that he would revise his view and agree to a meeting with a view to achieving a satisfactory solution.
47. On 3 June there were discussions between the Council and Mr Z's solicitors regarding the legalities of the car free requirement. A revised draft section 106 agreement was sent out by the Council on 9 July. It was amended by the developer and a further draft was sent by the Council on 27 July. The finalised legal document was sent on 31 July. On 4 August Mr Z's solicitors queried the solicitors' costs and the Council replied on 7 August justifying them. A meeting took place between representatives of the RA, council officers and councillors on 28 September. At that time the section 106 agreement was with the developer's

bank. A senior planning officer said that delay had been caused by the developer's application to set aside the 'car-free' status of the contract. At that meeting Mr Russell said that it was clear what was intended in the Overview and Scrutiny Committee and Cabinet minutes of July 2004.

48. On 1 October the Council's solicitor wrote to the developer's solicitor seeking a reply to the letter of 31 July which enclosed the finalised legal document.
49. In a letter dated 8 October to the Council's planning section the developer's architects said that their client had agreed with final wording of the section 106 agreement and the document was with their bank. They expressed their client's frustration that it had taken over two years for a relatively simple standard legal document to be produced and, while some of the delay was attributable to the negotiation of the car parking issues, they said that the legal department's administration of the process had, by any measure, been "reprehensible". (The RA have also queried why it took the Council over two years to produce a relatively straightforward section 106 agreement.) Mr Z's architects went on to say in their letter that the project could, however, proceed swiftly if the funding problems were resolved. There was a shortfall of £500,000 in the funding facilities available.
50. A Council progress report, completed around the middle of October 2009, says that the July 2004 Cabinet decision made no reference as to how the capital receipt was to be used. It had been used to repay debt in accordance with the Council's debt redemption policy as outlined in the treasury management strategy.
51. On 20 October 2009 the RA wrote to the cabinet member for finance and regeneration setting out the major difference of opinion between the RA and the Council.
52. The section 106 agreement with signed plans was received by the Council on 3 November but the Council did not receive the correct payment until 26 November.
53. Planning permission was formally granted on 3 December, immediately upon completion of the section 106 agreement.
54. On 4 December 2009 the Council declined the request by Mr Z's company for financial support.

### **The Council's view**

55. The Council says that the opening of a new community clubhouse within an athletics stadium in the vicinity helps to mitigate the loss of the hall.

56. Officer B told the Commission's officer that if the developer does not comply with the requirements in the land transfer it is open to the Council to bring action against Mr Z for breach of contract for damages or specific performance for breach of covenant under the transfer. Officer C told the Commission's officer that the Council will take action if the development is not completed by May 2012.
57. The Council's view is that the length of time taken to complete the sale is a reflection of commercial reality because the speed by which any property transaction can be completed depends on the willingness and ability of both the purchaser and vendor to conclude matters. The Council says that, once the original bidders who had submitted higher bids than Mr Z had been excluded, Mr Z could control the speed by which the contract could be concluded and there was no effective leverage that the Council could exert because the marketing exercise had demonstrated that there was no other likely purchaser. The Council's view is that there was no merit in Mr Z completing the purchase until he had fully tested the planning situation and the section 106 agreement was not completed until 3 December 2009. The Council does not accept that the RA has suffered injustice because of the lack of demand for the hall prior to April 2003 and the existence of alternative facilities in the area.

### **The view of the Residents' Association**

58. The RA do not consider that the athletics stadium it is a realistic substitute for the hall because it is situated within a park and some residents would be fearful of visiting it in the dark, its main purpose is as a clubhouse for the athletics club and it is only available when not in use by the club.
59. The RA consider that the closure of the previous hall without prior consultation was brought about by poor management, thereby denying residents the use of a facility for over seven years. The RA also consider that the Council failed to put in place planning contractual and financial safeguards which resulted in a lack of certainty that a replacement community facility would ever be provided.

## **Conclusions**

### **Exercise of my discretion to consider events dating back to 2003**

60. The events leading to this complaint date back to 2003 when the Council decided that the hall should be closed. I have exercised discretion to consider what has happened since 2003 because the RA presented its concerns to the leader of the council at that time, the RA did not allow the matter to lapse for any significant period, everything that has happened recently follows on from what happened in 2003 and 2004 and for a significant period of time the RA believed that the hall would eventually be provided. I do not consider that I can now investigate effectively what happened prior to April 2003 so I have not pursued the RA's concerns with events before this date.

## **The tendering process**

61. The tendering process did turn out to be lengthy. First of all the Council had to rank the bids received in October 2004 and then invite the submission of plans. The Council's planners and the RA were subsequently consulted on those plans. A preferred bidder was then identified. A letter was not sent out to the successful bidder setting out the process of the sale until 5 May 2005. It appears that there was some time slippage between consultation with the Council's planners and the RA and the obtaining of authority from the relevant portfolio holder to sell the site. Nevertheless, I do not consider that this was such an excessive delay as to be maladministration. I have seen no indication that the first two bids were pursued longer than they should have been. It was not evident in my view that there was going to be a significant problem with the first bidder's proposals until after revised plans were received on 27 June 2005. The Council then asked the first developers to revert to the original plans and they confirmed on 7 October 2005 that they remained committed to a successful redevelopment of the site. There was very little time lost before the Council contacted the second developers on 19 October 2005. And the Council again acted very quickly after the second developers had confirmed their revised offer on 12 December 2005. The Council wrote to Mr Z about his offer on 16 December 2005.

## **The sale of the land**

62. Once Members had decided to go ahead with the project, officers were, in my view, under a duty to execute their wishes without avoidable delay. I consider that there are significant periods of inactivity by the Council in dealing with the sale of the land to Mr Z. The Council confirmed on 14 February 2006 that it wished to progress the sale and leaseback scheme with Mr Z but the sale was not completed until 31 May 2008. I do not consider that this held up the start of development initially because Mr Z had to apply for planning permission. He submitted a planning application in August 2006 but then submitted amended plans. That meant that the Council had to carry out further consultation in December 2006. A decision on the planning application was reached in April 2007 so there could, potentially, have been significant progress at this point. However, there were also discussions on whether the Council would agree to transfer the freehold and discussions on the purchase price took place between August 2007 and March 2008. Nevertheless, this does not provide a sufficient explanation of such a long delay in my view. I consider that, despite the lack of effective leverage that the Council had, officers could have made more efforts to progress the sale of the land and their failure to do so was maladministration. Had it been evident that they had made more efforts, this may well have helped to reassure the RA that the Council's officers were not delaying the sale process.

### **The injustice suffered by the RA**

63. I also have to consider whether the RA have suffered injustice as a result of the Council's delay. It is difficult to establish with certainty when the developer might have been able to start building work but for the Council's delay. The developer might have had his own reasons for not starting work immediately on the project. I cannot, therefore, definitely attribute any increase in costs to be incurred by the RA to maladministration by the Council. However, the RA have in my view suffered injustice because they will never know for certain whether more efforts by the Council to accelerate the sale process would have meant that the developer would have started work on the project before the project funding problems became apparent in October 2009. It is reasonable for local residents to have had an expectation that the community facility would have been available well before now and I consider that they have a justifiable sense of outrage in this respect.

### **The order in which the Council dealt with the matter**

64. I have considered whether the Council should have insisted on the submission of a planning application for the retention of the 'car-free' requirement agreement to the draft heads of terms of a section 106 agreement before going ahead with the sale. There was no requirement on the Council to do this and I do not consider that this is a matter that has, in itself, been the cause of injustice to the RA.

### **The section 106 process**

65. I have carefully considered whether there was avoidable delay by the Council in the section 106 agreement process. Details of the whole process are set out above. I would not normally expect the section 106 agreement process to be so lengthy but in my view there was no excessive avoidable delay by the Council. The section 106 agreement was affected by the delay in dealing with the sale of the land. The 'car-free' issue has caused delay but it was an issue that was raised by Mr Z and his solicitors, not the Council. The agreement was completed shortly after the Council had received the correct payment on 26 November 2009.

### **'Ring-fencing' of the sale proceeds**

66. Mr Russell complained that, despite the undertakings to 'ring-fence' and retain the proceeds from the sale of the hall, thereby ensuring funds were available for it to be replaced with a similar facility within a new development, and the Council has refused to acknowledge any obligation to provide funding. Clearly, in July 2004 the overview and scrutiny panel members resolved to incorporate the text from the July 2004 meeting into its own minutes. However, the panel could only make recommendations and not reach a decision. The Council could have tied up the issue much more formally so that it was bound to use the sale proceeds in a particular way. The cabinet did not commit the Council to meeting any future

capital or revenue costs for the project or to use the sale proceeds in any particular way. That was a decision that it was open to the cabinet to take. As the cabinet did not make a commitment to use the sale proceeds in a particular way, that meant a decision could be taken subsequently to use the sale proceeds for other purposes. I appreciate that the RA feel that the Council has broken an undertaking but I have seen no evidence that, despite its efforts to facilitate the scheme in 2004, the Council made any funding commitment to it, other than to accept that a reduced capital receipt would be received in order that the redevelopment of the site would include new community facilities.

### **Failure to put in place planning and contractual safeguards**

67. The final two parts of Mr Russell's complaint are that the Council has failed to put in place planning and contractual safeguards which would have ensured the existing hall remained available for use until a contract had been entered into by the developer for the construction of the new community facility; and that the Council has failed to ensure proper provisions were made within the contract with the developer to protect the interests of the community. The RA have not had the use of a hall on the site for seven years. I do not consider that those involved in the Council's decision-making process in 2004 would have envisaged that this situation would last for such a lengthy period and so I do not consider it would be reasonable to apply the benefit of hindsight to what was agreed in 2004. The cabinet would have been aware that there would be some delay before a developer had entered into a contract to construct the new hall but no commitment was made to make the existing hall available for use until then, even though that had been a request in the text of the June 2004 public meeting.
68. Negotiations were taking place with the developer at a time when he had been identified as the preferred bidder and although the Council's officers had to consider how best to safeguard the project, those considerations would have to take account of the fact that placing too many restrictions and requirements on the developer might lead to the project being jeopardised. The Council can, however, take legal action against the developer if the development is not completed by May 2012. In my view the type of provisions to be included in the contract to provide some form of safeguard for the project was a matter for the professional judgment of the Council's officers. A performance bond could have been put in place to attempt to guarantee that the Council received compensation if the project did not go ahead. I cannot say what might have happened had the Council asked Mr Z to enter into a performance bond. To insist on this might have jeopardised the project and so even if I considered that there had been maladministration by the Council, I cannot establish with any certainty that this caused injustice to the RA. There is too much uncertainty for me to be able to say that, had the Council insisted on a performance bond, the hall would have been built by now and the RA would not have had to face a continuing increase in the costs of purchasing fixtures and fittings for the facility.



69. It should become apparent by the summer of 2011 whether the project is likely to be completed by May 2012. I would therefore expect the Council to consider whether there will be grounds to take legal action at that time. I do not, however, consider that there is any action I could recommend that would guarantee that the hall is completed by May 2012.

### **Finding**

70. For the reasons given in paragraphs 62 and 63 above I find that there has been maladministration by the Council which has caused injustice to the RA.

### **Remedy**

71. To put things right, I recommend that the Council should make a payment of £1,500 to the RA to compensate for the ongoing uncertainty, the RA's justifiable sense of outrage and as a contribution to loss of amenity and its time and trouble in pursuing the complaint.

**Dr J Martin**  
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**16 February 2011**