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**Private & confidential**

[REDACTED]

Your ref

Our ref [REDACTED]

21 September 2017

Dear [REDACTED],

**London Borough of Lambeth: audit of accounts for the year ended 31 March 2016**

I am writing to you in response to your letter dated 18 August 2016. Following on from my previous correspondence on 9 September 2016 and 20 February 2017 and your subsequent correspondence, and having considered the position further, I confirm that your letter complies with the statutory requirements for an objection to the Council's accounts for the year ended 31 March 2016 in that it asks that:

- We apply to the court under section 28 of the Local Audit and Accountability Act 2014 for a declaration that the following are unlawful items of account
  - Payments to contractors which are not in accordance with the contract and are therefore unlawful; and
  - Payments to London Borough of Lambeth by a developer.
- We issue a public interest report in relation to poor management of contracts.

I have therefore considered the position in this regard and determined the objection below. During subsequent correspondence you also raised concerns in relation to further contracts entered into by London Borough of Lambeth. These appear to me to be separate matters and were received after the date of the open period for objections to be received. Consequently I am unable to accept these. Notwithstanding this I have made enquiries into these matters the other matters raised in your letter and set out my findings under heading 4.4 below.

**1. Summary of decision**

I have set out below my consideration for each of the three areas you have raised in your original objection.

**1.1. Payments to contractors which are not in accordance with the contract**

On the basis of our enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate

arrangements to achieve value for money. I have therefore determined that there is no need for me to apply to court for a judgment as to whether an item of account is unlawful.

### **1.2. Payments to London Borough of Lambeth by a Developer**

On the basis of our enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. I have therefore determined that there is no need for me to apply to court for a judgment as to whether an item of account is unlawful.

### **1.3. Poor management of contracts**

On the basis of our enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. I have therefore determined that there is no need for me to issue a Public Interest Report.

## **2. Matters Considered**

In the course of considering your objection and reaching our decision, we have considered: the information and documents you provided us with; London Borough of Lambeth's formal response to your objection; legal advice received by London Borough of Lambeth; your comments on the authority's formal response; your comments on the documents shared with you by the Council; and the results of our investigation.

## **3. Background**

In your correspondence dated 18 August 2016 you raised objections in relation to the following three areas:

### **3.1. Payments to contractors which are not in accordance with the contract**

That the amounts of monies spent on repair works to the Authority's housing stock were far in excess of the level that would normally be expected given the size of the housing portfolio and that there has been price fixing between contractors in the Lambeth area. In addition, that poor contract management arrangements have been implemented, including failure to vet tenders, paying contractors for items they are not entitled, and failing to value work in accordance with the contracted terms.

Specifically, you referred to a payment of £3.85 million to T Brown for replacement of heating and hot water systems on the Notre Dame estate where the average value per property would appear to be excessive.

### **3.2. Payments to London Borough of Lambeth by a Developer**

That the Authority has acted outside of its powers in selling Authority property in a manner which they did not have the power to do on the basis that no competitive bids

were received and the land was erroneously sold as vacant whereas it was actually being used for parking and garage facilities.

In relation to the latter point, you indicate that you believe this was done in order to avoid the impact of the General Housing Consents 2013 provisions which require that market value is achieved.

### **3.3. Poor management of contracts**

That the Authority has implemented poor contract management arrangements in relation to the above and other matters and that this is evidenced by:

- The Authority's failure to provide you with requested documentation in a timely manner;
- Invoices being paid based upon assessments rather than invoices and without authorising signatures;
- A high use of tender waivers; and
- The costs of the Authority's New Town Hall exceeded the budget that had been set for property acquisitions.

As per prior correspondence my role is limited by statute. The powers and duties of a local government auditor are set out in the Local Audit and Accountability Act 2014 and the Code of Audit Practice. This gives local electors the rights to ask the external auditor, through an objection, to either:

- issue a report in the public interest; and/or
- apply to the courts for a declaration that an item of account is against the law.

In my previous letter, dated 9 September 2016 I set out my initial response to each of the three areas that you raised. I now set out my final conclusions below.

## **4. Decision**

### **4.1. Payments to contractors which are not in accordance with the contract**

You have indicated that you believe I need to appoint a Quantity Surveyor to consider your objection. I do not agree with that assertion and have not taken that action. It is for me to determine the actions I need to take in response to the matters you raise and have detailed those below.

You have provided numerous examples of areas where you believe expenditure by Lambeth is unlawful as you believe contracts have not been appropriately tendered or contract rates have not been appropriately applied.

To address these points we have held discussion with officers at Lambeth to understand how procurement processes are operated for contracts, particularly

associated with works on their property portfolio. These discussions have included the processes in place for letting three specific contracts. This work has not identified any concern in the process adopted by the Authority. I therefore have no evidence that Lambeth have mismanaged the contracting process.

As I previously referred to we have reviewed the payments made to T Brown for repairs and maintenance in the year that you reference in your objection. We have seen no evidence to suggest price fixing between Lambeth contractors or poor contract management.

You also alleged that by dividing the cost of the contract with T Brown by the number of houses on the Notre Dame Estate a higher than reasonable cost per kitchen figure could be derived. I have reviewed the contract with T Brown as well as payment made to them. I have traced a sample of these back through the work order process and considered whether I could evidence that they had been spent appropriately. I can confirm that the £3.85 million figure included items of expenditure relating to the replacement of the distribution network (as well as individual kitchens) and other work relating to gas servicing, water storage and heating. Review of these payments has not identified any concerns.

On the basis of our above enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. I have therefore determined that there is no need for me to apply to court for a judgment as to whether an item of account is unlawful.

#### **4.2. Payments to Lambeth Council by a Developer**

In your objection you refer to a report that states that the land being sold is vacant (when you believe it was being used as a garage and parking facilities) to circumvent the requirements of the General Housing Consents 2013. The General Housing Consents state:

*Paragraph 3.2 permits local authorities to dispose of vacant land and assets that are not dwellings (e.g. garages, drying areas etc.), at any price determined by the local authority.*

We have seen evidence the London Borough of Lambeth legal counsel is satisfied this is a legal transaction. We have also seen evidence of third party appraisal valuation of the site.

On the basis of our above enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. I have therefore determined that there is no need for me to apply to court for a judgment as to whether an item of account is unlawful.

### 4.3. Public Interest Report

You raise concerns regarding access to information, and specifically whether the Authority maintains invoices for electrical works. I have reviewed expenditure incurred by the Authority as part of my external audit. The Authority provided me with sufficient and appropriate evidence for all transactions requested.

You also mention that in 2015/16 Lambeth council spent £8.35 million purchasing the freehold of Olive Morris house in connection with the Town Hall Scheme. They also previously spent £2.2 million purchasing the freehold of Hambrook House and £1.7 million for the CPO of the Fridge bar, giving a total of £12.25 million for land acquisitions. Lambeth's budget for acquisitions in the viability study was £2.46 million, leaving a short-fall of £9.79 million (excluding fees and taxes). This is not an unlawful transaction, and that Lambeth has overspent on budget does not warrant the issuing of a Public Interest Report. The fact that an Authority overspends on a budget it has set is not considered unlawful.

I have also performed additional inquiries with regards to tender waivers, for which you allege poor contract management and request that I issue a Public Interest Report. I investigated the three largest tender waivers by value that you highlighted to us in your e-mail dated 10 August 2016. The results of my inquiries are documented below:

#### *Extension to SCM contract for agency workers (estimated value £30 million)*

I have reviewed documentation provided by the Council that shows that the waiver did follow the Council's internal processes as it was enacted by the Cabinet Member for Finance and Investment following approval from the Procurement Board. I conclude that this therefore received appropriate internal approval.

The Authority has acknowledged that its internal processes should have led to this contract being tendered earlier than was the case. Due to timing the Authority deemed it to be business critical for the Authority to extend this contract via a waiver whilst a procurement exercise was carried out, as the Authority is reliant on a large number of temporary workers employed under this contract. This decision was not challenged by other prospective bidders.

The contract has now been tendered and award of the contract is in progress. There is no further action that I believe the Authority should take.

#### *Housing Software-Northgate-C003648 (estimated value £10 million)*

The Authority has provided evidence showing that the decision to award this contract without a tender process was considered and approved by senior officers and members of the Cabinet. This documentation shows that the value of the extension was £809K.

This service relates to maintenance and support of the Northgate Housing Management system, which only Northgate are licensed to provide. As there is only

one supplier of this service the Authority deemed that it would not be reasonable for the Authority to put this out to tender, which is in line with the EU Procurement Regulations.

I am therefore satisfied that Lambeth has met its internal processes and behaved in a reasonable manner so I will not take any further action

*Extension of parking enforcement contract (estimated value £2.5 million)*

The Authority provided us with a copy of the contract with the supplier and documentation showing internal approval of the extension, which was done to allow further time for a procurement exercise to be carried out.

We concluded that there was a specific provision in this contract which originally commenced on 1 August 2008 for a term of five years, with an option to extend for a further five years. The Authority therefore has the right to extend the contract to 31 July 2018 in line with the terms stipulated in the contract. As the full five year extension period is yet to conclude, we are satisfied that this waiver satisfies Lambeth's Standing Orders.

On the basis of the above enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. I have therefore determined that there is no need for me to issue a Public Interest Report.

#### **4.4. Other matters**

Following my request for you to clarify your objections you provided various other additional concerns and commentary over contracts at Lambeth. These appear to me to be separate matters and were received after the date of the open period for objections to be received. Consequently I am unable to accept these. Notwithstanding this I have made enquiries into these matters as follows.

In relation to the matters you raised concerning Wyvil Estates we have confirmed that the Mears contract was originally awarded following a competitive tender exercise. We have reviewed the Officer Delegated Decision Report for procurement and waivers valued at £100,000. The report was prepared by the Project Co-ordinator and authorised by the Director of Property Services. The report is not dated.

The report outlines the method for choosing the supplier (in compliance with OJEU regulations) and the criteria set out for all bidders. The submission made by Mears Ltd came third (out of 14) on quality score and first (out of 14) on price. The Quality Evaluation Panel was mixed, comprising of a senior officers, external advisors (John Rowan Partnership and Sharpe Pritchard) and two Resident Representatives. Scores were moderated by HRE Procurement.

The contractual terms of the agreement between Lambeth and Mears are set out in a formal contract dated 24 April 2014. This contract includes a price list for the works. It has been signed representative from the Authority and Mears Ltd.

The Authority issued a task order in line with this contract that sets out the scope of works agreed between the Council and the Contractor, and is a formal instruction to the Contractor to commence work.

I have also looked at specific payments made to Mears. On a monthly basis the contractor will submit an invoice for payment. This is supported by an authorisation for payment completed by the contract administrator. In the case of Mears payments related to the Wyvil Estate, this is Pellings LLP (a third party), who will confirm the quantities of work claimed to be completed by the contractor on a monthly basis.

The Authority also carries out spot checks on a certain percentage of works done to assess the quality of the works. The Authority does not check all of the works undertaken by all of its contractors. It does have a dedicated contract manager for its work with Mears Ltd. This contract manager, in addition to the spot checks, holds monthly meetings with Mears Ltd where they are reviewed against ten areas of performance, including for example, customer care and ability to deal with and resolve complaints.

The Authority has a complaints process where residents can contact the Authority if they believe work has not been completed, or not been completed to an acceptable standard. In this case the Council will send a surveyor to the site to assess whether this is the case, and the contractor will be asked to rectify any works that are found to be substandard.

On the basis of our above enquiries, I have not seen evidence to suggest that the Authority has managed the situation in an unreasonable way or failed to have adequate arrangements to achieve value for money. Consequently even had the objections been received within the specified time limits I would not have been minded to issue a Public Interest Report in relation to those matters.

## **5. Declaration from the court**

Where auditor thinks that an item of account is contrary to law, they have discretion as to whether to apply to the court for a declaration to that effect. In this case, we have not identified any item of account contrary to law such that the discretion does not arise.

## **6. Public interest report**

We have also decided not to make a report in the public interest. Please note that there is no right of appeal against a decision not to issue a public interest report. Whilst the Local Audit and Accountability Act 2014 does not require an auditor to provide reasons for this decision, we do so, as a matter of good practice. Thus, the decision is on the basis that, as set out above, we have not identified any evidence that London Borough of Lambeth has failed to manage the contracts referred to in an appropriate manner.

## 7. Right of appeal

You have a right to appeal our decision not to apply for a declaration under section 28(3) of the Local Audit and Accountability Act 2014. Please note that there is no right of appeal against a decision not to issue a public interest report. Should you wish to do so, you must issue your appeal with the High Court within the period of 21 days beginning with the day after you receive this statement of written reasons.

This letter has also been copied to the London Borough of Lambeth so that they are aware of the response to the matters I have raised.

Yours sincerely

[Redacted signature]

[Redacted name]

Partner

*For and on behalf of KPMG LLP*