

## Appendix A

# Corporate Governance Failures in Enfield Council and their cost to the Council Tax Payer

## 1. Introduction

- 1.1 Appendix B is a copy of Grant Thornton's Local Government Governance Review 2013. This report is not specific to Enfield but its comments are relevant and apposite. It is an excellent paper and if you do not have time to read it all please at least look at the 2012 Highlights page. Of the nine findings all of them are relevant to Enfield.
- 1.2 Page 20 of the report explains why corporate governance is not simply an academic exercise, but has real consequences on service provision. Page 20 precisely extracts from the report 'Towards a Tipping Point'. That report sets out seven tipping point scenarios that will result in local government failure and their relevance to corporate governance. That is the report which was the subject of our previous Opposition Priority Business, and which was rubbished by the Labour administration. I am under no doubt that it will rubbish this paper as well.
- 1.3 Page 17 identifies the posts within an authority that should drive good governance.
- 1.4 Page 18 identifies the seven principles set out in Lord Nolan's Committee on Standards in Public Life.
- 1.5 The title of this paper comprises two quotes. The first recognises that leadership is the root cause of an organisation's failure. In Enfield political leadership is provided by the Labour Party with almost Stalinist exclusion of any contrary opinion.
- 1.6 If an organisation is not functioning correctly, only leadership can fix it. If leadership doesn't establish and protect a culture of healthy corporate governance, a vacuum arises and corporate governance failures multiply throughout the organisation. If the leadership culture itself is unhealthy, there begins the rot, and soon the organisation is lost. If an example of non-compliance with corporate governance exists, it's because leadership hasn't cut it out of the organisation in the first place.
- 1.7 If the leadership doesn't have the willingness or the capacity to change

then the leadership has to change.

- 1.8 Poor corporate governance does not just lead to inefficiencies, it can provide a shield or conduit for certain practices which fall well short of the seven principles of public life as set out by Lord Nolan. Those who fail to comply with proper corporate governance (particularly when difficult decisions need to be made) expose themselves perhaps needlessly to questions as to whether any of the seven principles have been compromised. When this occurs there is a severe risk of trust having left on horseback.

## **2. Opposition concerns**

### **(1) Scrutiny Function is not adding value.**

- 2.1.1 The administration treats the Scrutiny Function at Overview and Scrutiny Committee as an adversarial process, resents scrutiny and sees any potential acceptance of any criticism or suggestion as a sign of weakness. (n.b. one Chair of Scrutiny in Full Council referred to the Labour administration having at one time 'won' every vote in scrutiny).

- 2.1.2 While such a concern can be easily dismissed, since the opposition will often make such criticisms, where an administration refuses to be accountable and decisions are always reaffirmed at scrutiny, whatever their weaknesses or lack of compliance, this has the potential knock on effect on the quality of reports, quality of decision making and the behaviours of staff throughout the organisation. As a consequence of this if staff wanted to not disclose compliance failure issues or have every aspect of a decision not opened to scrutiny, the leadership behaviours facilitate that.

### **(2) The administration manages Council Meetings to avoid discussion, scrutiny or questioning of decisions.**

- 2.2.1 At each council meeting filibustering motions are brought to the fore to talk out reports, regardless of the substance and importance of the reports.

- 2.2.2 While such a concern can be easily dismissed, since the opposition will often make such criticisms, where an administration as a matter of course refuses to discuss the content of reports, this has the potential knock on effect on the quality of reports, quality of decision-making and may affect the behaviours of staff throughout the organisation. As a consequence of this, if either members or staff wanted not to disclose compliance failures

or avoid every aspect of a decision being opened to scrutiny, this practice facilitates that.

**(3) Decisions are sometimes published, acted upon, without proper governance and decision-making processes having being exhausted or complied with.**

2.3.1 By way of specific examples traffic management works have been carried out or road signs erected prior to the expiry of statutory consultation periods (e.g. Carterhatch Lane), decisions have been acted upon prior to the expiry of call-in periods, (issue of OJEU notice Cornerstone, payment to Cornerstone), press releases have been issued in respect of decisions prior to the report having been written, and therefore prior to the full financial and legal implications having been signed off (e.g. Enfield Town CPZ arrangements).

2.3.2 This cannot simply be dismissed as a typical criticism from the opposition. Furthermore, the more common this practice, the easier it would be for decisions to be effected where any of the seven principles of public life as set out by Lord Nolan could be compromised.

**(4) Whipping of Labour Party members in Planning Committee**

2.4.1 Members of the Conservative Group are alarmed at the consistent block voting of Labour Councillors and the fact that members of the committee appear to have been removed following occasions on which they have not voted en bloc.

2.4.2 Evidence of apparent whipping was caught on video at the determination of the Cat Hill planning committee.

2.4.3 The potential for abuse, the compromise of the seven principles of public life as set out by Lord Nolan and the knock on effects of the quality of reports and staff behavior are obvious.

**(5) Imposition of 5 minute speaking rule and rules of debate to committee meetings**

2.5.1 While such a concern can be easily dismissed as a typical criticism from the opposition, where such rules of debate are employed as a means of avoiding discussion, scrutiny or questioning of decisions potential for abuse, there is an enhanced possibility of compromise of any of the seven

principles of public life as set out by Lord Nolan and the knock on effects of the quality of reports and staff behavior.

**3. Cornerstone – a case study in corporate governance failures and their consequences for the public.**

3.1 The Council has two issues that it needs to consider and in respect of one, to act upon.

3.2 The first issue is the fact that the environment department's depot is not in the right location and not entirely fit for purpose. This has been known for years, yet the Council has struggled on. Resolution of this issue is not critical. Other issues are of greater importance. A number of suitable alternatives have been identified but given their price, location, or the need to deal with more pressing objectives, the decision to move the depot has not been taken. Both the Conservative and Labour administrations had reached the same conclusion.

3.3 The second and entirely separate issue is that the Council is faced with a shortage of primary school pupil places, ultimately leading to a shortage of secondary school places. The Conservative opposition warned the incoming Labour administration that it needed to act quickly about this, to reverse its opportunistic and unrealistic manifesto commitment not to use particular sites for schools and to embrace academies. In fact, it has warned the Labour administration of the impending shortfall in secondary school places, but the response of the Labour administration has been to ridicule the assertion.

3.4 The Conservative Opposition would allege that the shortfall arises from the type of decision paralysis that occurs where there is a failure to make the difficult decisions required to manage financial and other challenges (see p.20 Grant Thornton report). The Labour administration would no doubt cite the termination of the BSF programme as the type of policy that was likely to generate significant governance issues (see p.20 Grant Thornton report.)

3.5 Whatever the cause, the Council left very little time to meet its statutory duties to educate primary school children and it would appear that elected members claimed to have abdicated their responsibilities by leaving it to officers to identify a solution. Councillor Georgiou admitted this at Overview and Scrutiny by claiming that members had no role in the identification and appointment of Cornerstone. An assertion incidentally the Conservative opposition totally disbelieves.

- 3.6 In order to deal with the emergency created, officers committed the council to a contractual arrangement with Cornerstone to provide services without the Council complying with proper internal corporate governance procedures or the law. We do not know whether those officers who took control of this situation, knew at the time that the award of the contract to Cornerstone would have breached public procurement law (probably not), or whether this became apparent at the time of the subsequent drafting of the contract or the demand for payment by Cornerstone. Written requests raised by the opposition about how and when Cornerstone were appointed, still have not been answered.
- 3.7 The staff at Cornerstone may or may not have been the most appropriate people to carry out the task; of course we will never know because the Council explored possibilities to avoid that being tested through a competitive procurement exercise. It became apparent to officers that the appointment of Cornerstone without a public procurement exercise would breach European public procurement rules. This organisation was a new company, which had not yet filed audited accounts and would not have scored at all highly in a qualification assessment. Officers instructed DLA Piper solicitors to devise a means pursuant to which Cornerstone could be appointed without undertaking a public procurement exercise. DLA felt the need to instruct a QC to devise a scheme. We understand that at least one of the directors of Cornerstone had close links to the Labour Party. We have other areas of concern with regard to the relationship with Cornerstones, some of which we have raised previously. A reasonable councillor would conclude that either senior officers would have discussed this with the monitoring officer or the monitoring officer would have raised the matter on his own initiative, or at the very least ensured that the process was as transparent as possible. However there was no transparency in this process at all.
- 3.8 The device to avoid a public procurement exercise was to argue that the provision of the services was ancillary to the sale of property. Officers appear to have first offered up various educational sites as bait to secure the objective. Why these were not accepted is not known, however the Conservative opposition would assume that given the legal constraints in relation to the disposal of educational land, which involve both time and publicity, that these options were discounted.
- 3.9 It was proposed by officers that the Carterhatch depot be sold to Cornerstone without public auction, and without testing best value, and that an argument be concocted that the sale to or through Cornerstone of the Carterhatch depot (that had no educational purpose and had an existing planning use as a depot) was so unseverable from the provision of secondary school places that a public procurement exercise was

unnecessary.

- 3.10 The issue with this solution was that an alternative depot site would be required if Carterhatch were vacated. Officers had already been evaluating sites and third parties had offered up sites (suitable or not) to the Council. The political response had been up to that point that the Council was not interested. However there was sudden change of mind and the Conservative opposition would argue that the Council then having boxed itself into a corner was forced to take whatever offer was on the table. That offer was Morson Road.
- 3.11 In July 2012 a report was submitted to cabinet and then to Council (thereby avoiding the call-in process) recommending the entering by the Council into a lease for 40 years of the site at Morson Road site, on terms that were (to say the least) commercially unfavourable to the Council. In isolation, this report made no financial or commercial sense at all, in fact the Conservative Group maintains, that even in context it still makes no financial sense. The Labour Group moved an amendment of the order of business to prevent the report being discussed. On three separate occasions the Conservative opposition called for the order of business to be restored and it was only on threat of the Conservative Group walking out of the meeting that the Mayor permitted a debate in closed session after the Labour Group had adjourned the meeting to obtain a specific briefing on the matter from the Director of Finance. This was odd to say the least.
- 3.12 The report stated explicitly that the proceeds of the disposal of the freehold at Carterhatch was to be employed in defraying the leasehold payments at Morson Road. This was untrue as (although recognising the fungible nature of the Council's finances) the proceeds had already been prayed in aid as necessary to finance primary school places in order to link the disposal of Carterhatch to the primary schools programme. It is absolutely inconceivable that this fact was not known to the author of the report nor those who would have reviewed such report prior to its inclusion in the agenda for cabinet or the council, nor to those members of the cabinet and corporate executive who were privy to the device to avoid a public tender being conceived by DLA Piper and external counsel; yet this is what the Conservative opposition was asked to believe. The Conservative Group does not believe the argument raised.
- 3.13 In any event the acquisition of a leasehold interest at Morson Road can be ill-afforded. It is the Conservative Group's belief that the reason for doing this was to enable Carterhatch Lane to be vacated and that the predominant purpose of the evacuation of Carterhatch Lane was to facilitate the appointment of Cornerstone without the need for a public

procurement exercise. The financial consequences of this and the effect of the development of Carterhatch Lane on the surrounding area are nothing short of disastrous.

- 3.14 The delegated decision in relation to the award of the contract to Cornerstone was made on 20<sup>th</sup> September 2012. In breach of the Council's corporate governance procedures the report was not submitted to Democratic Services until such time as the second decision was made on 14<sup>th</sup> November, the purpose of submission is first to inform all councillors, secondly to commence the stand-still period, within which the decision cannot be executed and thirdly to facilitate call-in. It is absolutely inconceivable that the author and each and every signatory of that report, including members of the cabinet and the corporate executive involved with it, together with each member of staff who implemented the decision were unaware of this requirement of the stand-still period and the right to call-in, given this procedure is followed at least weekly. Nevertheless an invoice was dated 14<sup>th</sup> September by Cornerstone, this invoice related to historic services alleged to have been provided by Cornerstone in the months leading up to the date of the delegated decision to appoint them and not after that date. The invoice was paid in full by the Council on the very same day. It is utterly incredible that any of this was normal practice or regular. On the next day (21<sup>st</sup> September and prior to the expiry of any call-in) an OJEU notice was published publicising the award of the contract to Cornerstone. A public complaint was received by the Conservative opposition about the publication of this notice.
- 3.15 On 14<sup>th</sup> November 2012 a second delegated report was published outlining the heads of terms with Cornerstone. Attached to that decision report was the earlier decision report dated 20<sup>th</sup> September. The decision was called-in. At that meeting it was asserted that the omission to publish the earlier report was accidental. The Conservative Group does not believe that assertion. Despite the employment of a QC by the officers, no convincing case was advanced, in fact no argument was advanced at all, to support the link between the disposal of the Carterhatch Lane site and the provision of school places. In fact to this day, there remains no link between the disposal of Carterhatch Lane depot and the schools expansion programme. At that meeting officers and cabinet members asserted that no contract had yet been entered into by the Council with Cornerstone, an assertion that the Conservative opposition knew to be untrue when it was made at the meeting. In fact the council had already paid Cornerstone for services provided in July and August and was in receipt of further invoices for services that had already been provided but had not been paid for. In fact the council had even committed itself to pay for services beyond the scope of the authority set out in 20<sup>th</sup> September decision. Although there may have not been a written contract, there was certainly a contract, and more so it had been performed. Given the

limitation on the ability to speak at the meeting the Conservative opposition was unable to cross-examine the point but followed up with a written question asking for details of invoices raised by Cornerstone, when they were paid and what they related to. The answer reveals quite clearly that assertions made at the Overview and Scrutiny panel were untrue.

- 3.16 On 11<sup>th</sup> February 2013 a third delegated report, concerning the statutory consultation provisions in relation to the school expansion programme was called-in. The reason for the call-in was opposition concerns about the risk of deadlines not being met and the risk of pre-determination of planning applications and decision-making. The opposition was given an assurance by the cabinet member for Education and the officers that all consultations and timescales would be adhered to. On the very next day a further report was signed off by the cabinet member for Education, and again acted upon by officers prior to the expiry of the stand-still period. The Conservative group believes it to be utterly inconceivable that neither the cabinet member for Education nor the relevant officers were aware of these facts at the time of the call-in the day before.
- 3.17 At this call-in meeting those in attendance were treated to a bout of histrionics in response to the suggestion by the Conservative opposition that Labour Party members on the Planning Committee were liable to pre-determine applications and be the subject of whipping and were subjected to the usual arrogance and patronising responses from Labour councillors.
- 3.18 On 4th March the Conservative Group commissioned video evidence of the whipping of Labour members at a planning committee.
- 3.19 The Conservative Group has real concerns about the impartiality of the Council determining its own planning applications given the catalogue of less than transparent decision-making that has led to these applications being submitted.