

KPMG LLP  
Infrastructure, Government & Healthcare  
One Snowhill  
Snow Hill Queensway  
Birmingham B4 6GH  
United Kingdom

Tel +44 (0) 121 232 3000  
Fax +44 (0) 121 232 3578  
DX 709850 Birmingham 26

[REDACTED]

Contact

Mr Andrew Cardoza

0121 232 3000

28 January 2011

Our ref

[REDACTED]

Dear [REDACTED]

#### **Telford and Wrekin Council – Dawley Town Hall**

I refer to the previous correspondence, in particular the concerns you submitted dated 11 August 2010, 31 August 2010 and subsequent e-mails between yourself and Mr Cardoza, on this matter.

I should like to draw your attention to the booklet "*Councils Accounts: Your rights*" issued by the Audit Commission and sent to you by Mr Cardoza. You will note from the booklet that my role is limited to determining whether Telford and Wrekin Council ("the Council") has included an item of account in its annual accounts that is contrary to law (Section 17 Audit Commission Act 1998 - "the Act") and considering whether I should issue a report in the Public Interest (Section 8 of the Act).

Dawley Town Hall was originally leased to the tenants for a period of 3 years, 2002 – 2005, and under that lease no rent was payable to the Council. The provisions of the second lease, running from 2005 until its surrender in March 2010 provided for rent in the sum of £6,000 per annum (£29,500 in total to date of surrender).

The second lease did include provisions that required the tenant to make the property available for public use at a rate recommended by the Council. On the basis of evidence of community use submitted to the Council, the Council would then calculate an abatement of rent.

The Council's Internal Audit team has looked into the process of renting these premises, and they have evidence that, after the lease was entered into, the Council's Revenues team were instructed not to collect the rent. This is inserted electronically on the 14/09/05, on what is known as an electronic "sticky note" onto the electronically saved lease document dated the 31/08/05, which notified the Council's Revenues, Accountancy and Land & Property teams of the completion of the lease. The "sticky note" stated: "*spoke to [REDACTED] who confirmed that no rent is to be charged as they let other users use the building & they pay ndr. [REDACTED] 14/9/05*". KPMG reviewed the Council's data management system and verified that the "sticky note" could not be altered once entered onto the electronic lease document and nor could the electronic date be changed from the exact date it was entered onto the system.

This information is in the public domain by reason of the Internal Audit investigation reported to the Council's Audit Committee on the 21 September 2010. However, when asked directly by KPMG [REDACTED] said that the decision not to charge rent for the property was reached through discussion between himself and the then Revenues Team Manager and the then Community Development Manager, both of whom have since left the Council, and as you know so too has [REDACTED]

The Council's Internal Audit report identified clear flaws in how this lease was managed and these are being addressed separately by the Council. However, it is accepted that no record of the management of the lease provisions were undertaken by the Council exists, nor is there any record that there was any positive/proactive action on the part of either the Council (for example to identify a rental rate for the properties) and the tenant (to report public use of the premises) to ensure full compliance with terms of the lease entered into by both parties. In addition it is accepted that there were lease provisions that required the tenant to report community use and that failure to do this would result in the tenant's liability for the full rent, which as a result and at the time of signing the lease agreement the rent was due and collectable.

Notwithstanding this no rent was ever sought because before any demand had been submitted to the tenant the Council's internal processes, via the insertion of the "sticky note" onto the lease agreement, meant that the Council's Revenues Team were notified that no rent was chargeable.

*It is the view of the Council's Monitoring Officer (MO) that "... Taking into account all the circumstances, principally the terms of the second lease, the fact that this leasehold relationship has been in existence since 2005 (and has since terminated) and most importantly the recorded note replicated previously in this note I am of the view that this rent is not due and owing: This is notwithstanding the fact that it is highly unlikely that whoever took the decision not to charge rent had the requisite actual authority to make the decision not to charge rent. In my view it would be sufficient, for the tenant to rely on the officer's "ostensible" authority and therefore argue that the Council had waived its right to claim that the rent was due and owing." In addition the MO has also stated that "...It is also material to this to note that neither the authority nor the tenant have complied with lease requirements regarding the payment of rent, further evidence that this provision had effectively been waived and both parties have acted in accordance with this de facto position."*

It is also the Council's MO view that the decision to lease the property in the first place was as a result of reduced/no use being made of the building and as a result of increasing maintenance costs. The Council has estimated that it would have faced costs in the region of £17,300 for the five years from 2001 (and more if you include extrapolated expenditure for the final 3 years of the lease as well – perhaps in the region of £22,500) which would have been a direct cost to the Council to maintain the unoccupied building. The Council informs us that it has evidence that the tenant has carried out improvements/repairs to the property that has resulted in recent Council undertaken condition surveys indicating that the overall condition of the property is better than it was when originally leased to the tenants.

In addition, the Council informed us that if the building had been left empty it would have faced additional NNDR (national non domestic rates) of some £1,900 per annum for the financial

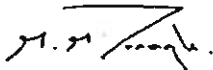
years 2008 and 2009 (i.e. approximately £3,800 for the two years), when “empty rates” would otherwise have been payable by the Council on the property.

Given the above factors, namely:

- 1) the doubt that exists, and as articulated by the Council’s MO, as to actual recoverability of the debt, due to the existence of the electronic “sticky note” clearly stating that no rent was to be collected on the second lease;
- 2) the benefits of this lease that the Council has secured through the occupation of this premises, principally the reduced costs to the public purse and protection of a potentially vulnerable asset were it to have been left unoccupied; and
- 3) the cost of undertaking further work in order to issue a public interest report (PIR) by ourselves would outweigh the uncollected rent in this circumstance, nor would a PIR add any more information into the public domain that is not already publicly available by virtue of this letter, the Council’s Internal Audit report and Audit Committee discussions on this matter.

I have therefore concluded that I do not consider that it is in the public interest to take any action to seek to recover or collect the rental payments under the second lease.

Yours sincerely



Michael McDonagh  
**Partner, KPMG LLP**

**cc: Victor Brownlees, Chief Executive, Telford & Wrekin Council**