

LONDON BOROUGH OF LEWISHAM

**REVIEW OF**  
**DOWNHAM LIFESTYLES**  
**PRIVATE FINANCE INITIATIVE PROJECT**  
**PROCUREMENT PROCESS**

**REPORT**  
**JANUARY 2006**

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**EXECUTIVE SUMMARY**

1. The procurement of the Downham Lifestyles project took just over 4 years from the approval of the Outline Business Case by central government to financial close when all of the details of the agreement, including the final price, were concluded. However, the months immediately following Outline Business Case approval were taken up with initial preparation work, so a fairer point of comparison to measure the length of the procurement process is from the advertisement of the contract in the Official Journal of the European Union. On this basis **the procurement took 3 years and 8 months**. Although this is a long time, it must be considered both in relation to the nature of the project and in comparison to other similar Private Finance Initiative schemes.
2. The Downham Lifestyles project is **very complex and also innovative**:
  - it involves a range of public services, including leisure facilities, a library, health service accommodation, a park, and a related social housing project;
  - it is the first project of its kind, and one which many others involved in the provision of public services are interested to emulate;
  - its complexity means that it has a multiplicity of different stakeholders, including the London Borough of Lewisham as a corporate body leading the procurement of the project, and the various departments directly involved, the Lewisham Primary Care Trust and the various health service providers who will occupy some of the accommodation, the local residents and community as a whole, and the wide range of customers and users of the various facilities and services provided within the project.
3. The project was procured at a time when the **market was very immature**, even for simple leisure schemes:
  - there were few providers and funders with any experience;
  - additional problems are presented by the application of the Private Finance Initiative model to the leisure facilities, as well as the incorporation of health service accommodation;
  - the standard contract drafting was developing during the procurement process, and in any case relates to simpler leisure schemes without the significant involvement of other services.
4. All of this means that it was **unrealistic to expect the procurement to proceed quickly**; it was always likely to take a long time to bring together the various elements of the deal and reach financial close.

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5. It is the case that the **procurement timescale may be considered to be comparable to similar projects**. It was the second of the four “leisure pathfinders” to reach financial close, and one of the others is still not closed at the time of writing, with no prospect of conclusion in the near future. Complex Private Finance Initiative schemes often take between 3½ and more than 4 years to procure, especially in the early days of the application of this sort of contractual model to a particular type of public service. The Stoke Bentilee scheme, which may be considered to be the most comparable project, took more than 4 years to procure, including nearly a year between commercial and financial close.
6. The Downham Lifestyles project suffered from a range of problems during its procurement, many of which could not have been reasonably been anticipated by the various project teams. Some of these problems caused delay, whilst others, although they did not feature on the critical path, did require considerable input to resolve. I believe that the **factors that caused significant delay** included the initial necessary collaborative work with the 4Ps to prepare to approach the market, the change of bank funder, the concurrent negotiation of the Brent project, and various aspects of the approvals process, including in particular unexpected taxation issues.
7. However, it must be emphasised that **many other things were dealt with in a manner that may be regarded as best practice**, and proceeded relatively smoothly. These matters could have caused significant delay, or even compromised the whole project. They include Planning approval, community consultation, land and property title issues, and the resolution of affordability.
8. Although there are issues about the project management and resourcing of the work for all the key stakeholders – the London Borough of Lewisham, Lewisham Primary Care Trust, and the private sector provider consortium – and also about collaboration, partnership working, and communication between them, I conclude that **project management was reasonably well balanced in the circumstances**, and I believe that individuals in all the organisations worked hard, to the best of their abilities, and in good faith, to conclude the procurement.
9. It is the case that **financial close could have been achieved quicker, but possibly only at the expense of value for money and additional risk**. Given that there is no over-riding deadline by which the facility has to be built and operational, I consider a focus on getting the right deal rather than speed to be appropriate.

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10. A number of **lessons to be learned for the future** have been identified from this review, as referred to in the body of the report and summarised in section 4 of the text. These include:
- relevant considerations at the point of preferred bidder appointment;
  - balancing advice and commercial decision-making;
  - contingency allowances for time slippage and affordability;
  - formalising project management, and senior and member level involvement;
  - adequate resourcing for stakeholder consultation, and improved communication in general;
  - full client-side agreement to the details of the accommodation and facilities prior to close;
  - a partnership approach to publicity;
  - and continuity from procurement into contract management.
11. Perhaps most importantly, the project is now in its construction phase, at the beginning of a contract of more than 30 years. Although problems were experienced in reaching financial close, these now need to be put aside so that **all partners can concentrate on the future and manage the contract effectively**. I perceive that some of the difficulties experienced to date are contributing to ongoing problems in the construction phase.
12. **Downham Lifestyles is a very exciting project that will bring many benefits** to its users, to the community in Lewisham and the surround areas. It is already attracting interest amongst other public service providers across the country, and will undoubtedly provide an exemplar for many other combined service schemes that follow. All parties should be pleased to be involved, and I would draw readers' attention to the following extract from the Consortium statement that is set out in full at 3.6.1 in the body of my report.
- "The Consortium.....is proud to be involved in a long-term partnership to provide services to the communities of Lewisham, and believes that the positive working relationship between the Authority, the PCT, their advisers and the Linteum / Leisure Connection team has been a major contributory factor to the excellent progress towards the delivery of the service which has already been achieved."

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#### 1. INTRODUCTION

- 1.1 This report concerns my review of the procurement process for the London Borough of Lewisham (LBL) “Downham Lifestyles” Private Finance Initiative (PFI) project.
- 1.2 The review was commissioned by the LBL Chief Executive and Director of Resources, in response to concerns raised by the Mayor, Steve Bullock, about the length of time it took to conclude the procurement, and reach “financial close” for full contractual agreement, in order that the construction of the facilities might commence.
- 1.3 The brief for the review was to consider the procurement process up to the point of financial close, to investigate the reasons for delay to the project, and to identify lessons learned, to improve the management of future similar procurements.
- 1.4 My report includes:
- a description of how I undertook the review – section 2;
  - my findings – section 3
    - 3.1 - procurement timescales,
    - 3.2 - delay factors,
    - 3.3 - comparison with other projects,
    - 3.4 - LBL project management and governance,
    - 3.5 - NHS Primary Care Trust (PCT) involvement,
    - 3.6 - private sector provider Consortium bid team,
    - 3.7 - other points;
  - a summary of lessons for the future – section 4;
  - a list of those who contributed to the review – Appendix A;
  - and a schedule of key dates in the procurement process – Appendix B.

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#### 2. REVIEW METHODOLOGY

- 2.1 My review commenced with examination of a range of procurement and project / contract documentation, including briefing notes, reports, the business case and the project agreement.
- 2.2 I then interviewed a number of key individuals who were involved in the procurement from LBL and its external advisors; plus the bid manager from Linteum together with the Chief Executive of Leisure Connection, both from the private sector provider consortium (the Consortium); and also two officers of the Primary Care Trust. In addition, I discussed the project, and other similar and potentially comparable schemes, with a representative of the Public Private Partnerships Programme Ltd. (4Ps). A list of the interviewees is attached at Appendix A.
- 2.3 All of these discussions were structured, with questions and issues identified in advance, notes taken and agreed with interviewees. All interviewees were asked about anything that could or should have been done differently, in order to identify lessons for the future.
- 2.4 I also contacted a member of the project team for Stoke-on-Trent City Council's "Stoke Bentilee" scheme, which was identified by the 4Ps as the most suitable comparator for the Downham Lifestyles project.
- 2.5 In the absence of published statistics on lead times for PFI projects across the country, I reviewed the timescales for schemes that I have been personally involved in for comparison purposes. Also, I am the general editor of a looseleaf encyclopaedia published by Sweet and Maxwell and entitled "Public Private Partnerships and the PFI". I have some twenty writers from ten different organisations, who work with me to contribute to this publication, and between them they have vast experience of every type of PFI deal. I contacted a number of them, as well as a range of my other contacts, to discuss their experience of typical timescales.
- 2.6 I then produced a draft of my report and circulated it to all the key individuals who contributed, and invited them to comment. Where relevant and appropriate, I have taken on board such comments in this final version of my report. I would draw readers' attention to the statement made by the Consortium for the purposes of providing context to their contribution, which is set out in full at 3.6.1.
- 2.7 I would like to thank everyone who gave up their time to supply information and to express their views to contribute to my review.

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**3. FINDINGS**

**3.1 Procurement timescales**

3.1.1 The Downham Lifestyles project took **just over four years in procurement** from the approval of the Outline Business Case by central government to “financial close”, when all elements of the deal, including the final price, were concluded for the Project Agreement (contract) to be signed, in order that the construction phase might commence.

3.1.2 Although this is a substantial length of time, it is not unusual for PFI schemes, and particularly for complex and innovative projects such as this one. I deal with the impact of this complexity in the following section 3.2. The timescale must also be considered in relation to the other leisure “pathfinder” projects, only one of which closed quicker than Downham Lifestyles, and comparable schemes elsewhere. I set out my findings on this aspect in section 3.3 below. In summary, on the basis of these comparisons, the **LBL scheme may be considered to have proceeded to a fairly typical procurement timescale.**

3.1.3 A **schedule of key dates** during the procurement is attached at Appendix B.

**3.2 Delay factors**

3.2.1 There were various specific factors that contributed to the length of the procurement process, as identified and discussed below. However, it is **difficult to disaggregate the impact of these factors individually**, since they were often being considered and dealt with concurrently, and / or other progress was being made meanwhile. Nevertheless, where particularly significant, I have provided a rough indication of the time impact of individual factors. It should be recognised that a project such as this is always likely to suffer from a series of factors, some of which could not be reasonably anticipated, that will be challenging for the parties to resolve, and that will have the effect of extending the procurement timescales. This is a key point that the Consortium wishes to emphasise in their statement set out at 3.6.1.

3.2.2 I must emphasise at this point the **most significant overarching reasons** why the project took a long time to procure: firstly, the **extreme complexity of the Downham Lifestyles project**, its innovative nature, and the number of public sector stakeholders involved; and secondly, the **immature state of the market and the standard contractual documentation** for leisure PFI projects at the time the procurement commenced. I deal with these issues in more detail in the following section of this report, but they do need to be borne in mind when considering the specific factors set out immediately below, both in general and in relation to their impact on these individual factors.

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- 3.2.3 It is also relevant to note that the application of PFI to leisure facilities presents additional problems over and above those involved in other types of PFI scheme, which are concerned with the provision of accommodation from which public services are run by the public sector, such as schools PFI, for example. With leisure deals there is a need to involve leisure operators in addition to private sector partners who manage the accommodation and associated facilities. There is also the issue of the risk of changing demand for leisure provision, both in terms of total volume, and also in relation to differing types of leisure activity.
- 3.2.4 Furthermore, I suggest that it is equally important to consider the wide range of other matters that could have caused delay to this project, but in fact were resolved relatively smoothly and quickly. I list and comment on the main such points in the final paragraph of this section.
- 3.2.5 The first point that is evident from the schedule of key dates at Appendix B is that there is a **gap of five months between approval of the Outline Business Case (OBC) and the publication of the contract advertisement notice** in the Official Journal of the European Union (OJEU). In the case of urgent projects, one might expect to see the notice published immediately following OBC approval. However, in this case, the project was one of four “pathfinders” being managed with input from 4Ps. The central government Department for Culture Media and Sport (DCMS) required LBL and the other pathfinder authorities to adopt a standardised approach to the market. In order to assist with this, the 4Ps were engaged to lead the four procuring local authorities in the initial development of their project proposals into model Invitation to Negotiate (ITN) documentation.
- 3.2.6 In addition, there was concern in central government about whether there was sufficient private sector interest in leisure PFI deals, so the 4Ps conducted consultation with the private sector, and LBL staff were involved in this exercise. The four pathfinder local authorities were also involved with the 4Ps in appointing the leisure and legal consultants who worked as advisers and on developing the model documents.

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- 3.2.7 All of this resulted in a few months hiatus whilst the public sector collectively worked on getting ready to approach the market. It may be argued that this initial work brought benefits in terms of preparing both the public sector procurers and also the private sector market for the process, and that some or all of the projects may have taken longer or been poorer value for money without this preparatory phase. It may also be the case that LBL would anyway not have been sufficiently ready to approach the market independently at the point of OBC approval, and would have taken a similar, or even longer, period to work up documentation internally. It is of course impossible to be certain what the outcome would have been without this preparatory work. Irrespective of the benefits, I suggest that it was not in practice a matter of choice for LBL, since the approval from DCMS for PFI credits was at least implicitly on the basis of co-operation with the collective approach led by the 4Ps. Although involvement with the 4Ps' work was not formally compulsory for LBL, there was an expectation of collaboration. However, there was also at this stage a recognition that the LBL scheme was different and more complex, and that its procurement process and timescale might therefore deviate from that of the other pathfinders.
- 3.2.8 At an early point in the negotiations stage of the procurement, difficulties were encountered in agreeing the **letter of appointment to the preferred bidder Consortium**. This was signed in October 2003, some four months after approval of the appointment. Although I believe this had little or no impact on overall timescales, given that other matters, including the main negotiations, were progressed meanwhile, it did take up time of LBL officers and their advisers, and also presumably within the Consortium. Moreover, there is a strong argument that this matter did not bode well for the rest of the negotiations, although representatives of the Consortium feel that it was not detrimental to relationships or the rest of the procurement.
- 3.2.9 I would comment that the selection and approval of the preferred bidder is one of the points in the procurement process where the public sector client is most powerful. It should therefore exploit this power positively to close down as many issues as possible in preparation for the forthcoming negotiations, and formalise this agreement in writing, before the preferred bidder appointment is approved and announced. If it is concerned about any aspects of the preferred bidder team, including for example the appointed advisers, or any aspects of the bid itself, it should seek to resolve these matters at this point. It might even seek to influence the structure of the bidding team, and / or the engagement of advisers. I suggest that this is one of the lessons to be learned for the future.

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- 3.2.10 The second significant delay factor was the **change of bank funder from NIB to Barclays**. This occurred as a result of NIB's position in relation to the allocation of demand risk and the treatment of third party income within the project, which was first identified as an issue in January 2004, some seven months after the appointment of the Linteum / Leisure Connection Consortium as preferred bidder. It is not the purpose of my review or this report to comment in any detail on the rights or wrongs of NIB's position, but it does relate to the developing state of the market and the standard contract drafting for leisure PFI projects. It is understood that NIB funded another deal for the Consortium that was closed on the basis of a certain allocation of risk, which they then sought to apply to the LBL project. Meanwhile, other deals and standard drafting were developing on a different basis, which LBL and its advisers considered appropriate for Downham Lifestyles. Moreover, any deviation from what was emerging as the standard approach would have required the approval of derogations via PUK for approval from central government and the payment of PFI credit funding.
- 3.2.11 Attempts were made to find a compromise way forward, via income benchmarking, but ultimately it proved impossible to reconcile the opposing views, and NIB was eventually replaced by Barclays at the end of April 2004, some four months after the problem was identified. It would be incorrect to conclude that the change of bank in itself caused four months delay, or indeed a longer period allowing for time to bring Barclays fully into the negotiations, since other matters were progressing meanwhile. However, this is clearly one of the most significant delay factors.
- 3.2.12 I comment below on the way the change of bank was handled by the project teams, but it should be recognised that funder changes during the course of procurement for PFI projects are not unusual, and nor are lengthy negotiations around funder positions. It is also relevant that the market for providing debt funding for leisure deals was very limited at the time, with only a choice of only two banks with any experience in the sector.

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- 3.2.13 The Linteum / Leisure Connection Consortium was appointed as **preferred bidder for the London Borough of Brent leisure PFI** scheme in September 2003, three months after being selected for the LBL project. Thus they were negotiating two contracts concurrently, and from the summer of 2004 onwards they prioritised work on the Brent deal up until it closed during the following March. This was discussed extensively between LBL and Linteum at the time, and indeed it is understood that Linteum was open about their strategy. However, the timing and certainty of communication on this point is somewhat unclear between the parties, since the Consortium believe that they confirmed their position in July, whereas LBL consider that this did not emerge until later in the autumn.
- 3.2.14 The Consortium sought to reassure LBL staff and advisers that this approach would make the eventual closure of the LBL deal easier. This was suggested on the basis that the Brent scheme was much simpler, involving only leisure provision and a single client, and that issues resolved in Brent would be applicable to the LBL project. In the event, this did not happen, because the LBL project was different and the Brent approach was not considered by LBL and its advisers to be applicable. It might even be argued that the attempts to apply Brent caused further delay in the final stages of LBL negotiations. Once again, there was a lack of clarity about communication, since the Consortium understood that there was initial agreement to proceed on the basis of the Brent deal, and that this agreement was subsequently rescinded.
- 3.2.15 I comment further below on the approach of both the bidder and LBL teams to this factor and its consequences, but there is one point I would like to emphasise. It is not unusual for bidders to be working on negotiating more than one deal concurrently, and it almost always places additional pressure on the individuals involved, and thus causes difficulties for achieving close. The work to be done within bidder teams in the final run up to financial close of PFI projects is extensive, and at this point in particular exceeds the input required from the public sector. Realistically, it will often be the case that a bidder will have to choose between projects to prioritise for close. This is a commercial decision, on which both the success of individual projects and the viability of the bidder organisations may ultimately rest, and it is inevitable that some projects will be delayed as a result.
- 3.2.16 I would also like to emphasise that this issue highlights the need for clear and formalised communication throughout the procurement process, since it appears that there was misunderstanding between the parties about this matter on two occasions.
- 3.2.17 Although it is difficult to be precise, and impossible to disaggregate the impact of individual factors on the overall process, it is likely that the project would have been delivered several months earlier, if there had been no change of bank and no Brent deal running concurrently. The extent of time that might have been saved in practice is a matter of some speculation, since it depends on whether other issues could have been concluded within a reduced timescale. It must be emphasised that such a complex project was always likely to be slow to reach financial close, and that whilst it might have been progressed quicker, this would possibly only have been achieved at the expense of value for money.

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- 3.2.18 Two specific matters cause difficulties and delay in the final stages of the procurement of this project, neither of which could reasonably have been anticipated by either the LBL or bidder teams. The first of these was a change in the March 2005 Budget to the rules for the application of **stamp duty land tax**. The implications of this change were potentially very serious for the LBL project with an additional financial burden resulting if the tax were applied to the leasehold transaction within the overall deal. Although the Inland Revenue advised reassuringly on the matter, it did take time to consult, to take advice, and for LBL officers to consider the risk that the Inland Revenue might in future take a different position, and whether the authority should bear this risk. The Consortium and its legal advisers contributed to the resolution of this issue by amendment to the structure of the leasing agreements within the deal.
- 3.2.19 The second of these two late and unanticipated factors was one of the issues raised by the external auditor in their review of the project prior to close. The auditor questioned a number of areas of the deal, as is common in these cases, including the accounting treatment in relation to the allocation of demand risk and the structure of sub-contracting within the Project Agreement. Most of the auditor's points were resolved without undue loss of time, but one point was a significant delay factor: the awarding of **business rate relief** to the private sector provider Consortium, on the basis of Industrial and Provident Society status. It is understood that LBL took Counsel's advice on this point, but it still took time to resolve the auditor's concerns, thus delaying the final stages of the approvals and closure process.
- 3.2.20 With the repeated proviso that disaggregating the factors is difficult and imprecise, I would suggest that these two taxation issues in combination caused maybe 2 months delay in the final stages of the procurement. The Consortium expressed considerable frustration about the delay at this stage, as they and their lawyers had made a commitment to achieving close in March and subsequently at the end of June / July 2005. Of course, it must be recognised that all parties were frustrated, and there can be no certainty that the Consortium would have been able to achieve close by March, given the extent of work required amongst the private sector partners at this stage.
- 3.2.21 Time was also taken for **LBL to consult other bidders about the terms of the deal** prior to close, allowing a 10 day standstill in accordance with the legal ruling in the "Alcatel case". This was relatively new case law, and indeed consultation on the changes required as a result of the ruling was issued by the Office of Government Commerce in August 2005, just prior to financial close of the Downham Lifestyles deal. Given the timing of this, and the fact that the legislative changes were at consultation stage, it may be argued that it was not strictly necessary for LBL to undertake this consultation and impose the standstill period of 10 days. However, to do so may be regarded as good practice, and the safest way forward in the circumstances.

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3.2.22 Other **factors that were resolved relatively smoothly**, although they could have caused substantial delay to the project, include:

- **Planning Approval**

This was identified as a risk by the LBL project team and mentioned in the earlier briefing notes I reviewed, but was actually achieved smoothly, with no impact of the overall timescale. This is impressive for such a large-scale project involving a range of stakeholders, and with inevitable sensitivities. I would suggest that this success is related to the following bullet point. It also implies both that the designers for the bidding Consortium produced a good application, and that LBL was suitably resourced to carry out its development control function. The Consortium made four separate applications for the different elements of the project, in order to assist with smooth approval, and also took the initiative to engage the Environment Agency in relation to the application for the park. They commented favourably on the way the Planning process was handled within LBL, and praised Pete Smith of the LBL Planning service. The PCT commented that they consider that the smooth Planning approvals process was supported by the quality of the design proposals.

- **Community Consultation**

This seems to have been handled extremely well with a very positive benefit to the project. The LBL team, and David Welch, as project manager, in particular must be complimented on this aspect of the procurement. I also understand that the Linteum / Leisure Connection Consortium, in their capacity as preferred bidder, were engaged in the consultation and contributed to its positive impact. Representatives of the Consortium mentioned that they took on board a lot of points that were useful in developing the project, from the community open day that was held as part of the consultation process. They emphasised that they were keen to participate in community consultation so that the Planning applications might be progressed as quickly as possible. The PCT were also involved in the neighbourhood consultation process, including acting on behalf of other health service stakeholders. I would comment that this joint approach to community consultation should be regarded as best practice.

- **Land and Property Title Issues**

Although, there were inevitably some issues surrounding this aspect of the procurement, and a few of them took some time to resolve, I suggest that this represents another aspect of the procurement that was handled well, principally by LBL internal legal staff. Given the complexity of the deal, the different pieces of land involved, and the inevitable existence of rights going back many years, work to resolve these matters could easily have been a major delay factor, whereas it was in fact dealt with relatively smoothly.

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#### **▪ Affordability**

This is another aspect that causes huge difficulty and often very significant delay in many, if not most, PFI projects. Once again, although there was an affordability gap, it was addressed, by a combination of means, in a positive way. In particular, I note that contributions to bridge the gap were forthcoming from various partners: a successful bid was made to central government for additional funds, whilst LBL contributed, and the NHS PCT met its share. I believe that this demonstrates some effective joint working within and between the public sector partners, although there are issues about the relationship with and involvement of the PCT, which are dealt with below. Also, it should be noted that the Consortium feel that too much time and effort was expended in consideration of unitary charge “sculpting” (changing the profile of payments by LBL to the Consortium to improve affordability via cash flow gains), which was subsequently abandoned.

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**3.3 Comparison with other projects**

- 3.3.1** Unfortunately, there is **no published database of comparative timescales** from OBC to financial close for PFI projects across the country. The 4Ps have indicated that they are intending to develop such a database, but they have not yet done so.
- 3.3.2** The 4Ps website indicates a two year timescale for the procurement of PFI projects, but I would suggest that this is only a reasonable expectation for relatively simple projects being developed and procured in a mature market, with establish standard contract drafting that has been tested on a range of closed deals, (plus of course very strong leadership and project management, and a big dose of luck!).
- 3.3.3** My own personal experience, and that of a range of my contacts (as described at 2.5 above) is that the average is generally longer, even for simple schemes in a mature market, at least 2½ and maybe nearer to 3 years. The **time for complex, innovative projects in newly developing markets**, which may be “pathfinders”, and where the standard drafting is being developed as the project is procured, is almost always at the longer end of the spectrum, and **frequently extends to more than 3½ or 4 years**.
- 3.3.4** In the case of the LBL project, the initial work with the 4Ps, as described at 3.2.5 to 7 above, extended the procurement timescale by 5 months at the beginning, so it could be argued that a fairer point of comparison would be from OJEU advertisement, on which basis the **Downham Lifestyles project took 3 years and 8 months** to procure.
- 3.3.5** What is particularly relevant to consider here is the fact that the LBL project was one of four leisure “pathfinders”. **Only one of these four projects closed before Downham Lifestyles**: the Penwith scheme, which took 2½ years, and is far simpler, without other services involved. It is understood that the third project closed in November 2005, giving a timescale of 4½ years. The final project is not near to close and it is understood to be subject to significant change and reconsideration.
- 3.3.6** Downham Lifestyles is innovative, both in the sense that it is a leisure PFI pathfinder project, and also because it is one of the few PFI schemes that brings together a number of different public services in one facility. It is also an extremely complex project, with many stakeholders, involving leisure, a library, health service accommodation, a 20 acre park, and a related property deal for social housing. This sort of project is bound to take a considerable length of time in procurement.
- 3.3.7** The Stoke Bentilee Joint Services Centre scheme was identified by 4Ps as that which is most comparable to the LBL project. This is a leisure scheme with other public service involvement, plus a considerable element of retail in addition. I contacted a member of the Stoke-on-Trent City Council to enquire about the procurement timescales for this project. It took a total of 4 years and 3 months, including 11 months between commercial and financial close, with the delay at this stage due principally to the need to conclude negotiations with commercial unit leaseholders. Although this particular issue is not relevant to the LBL project, it does illustrate the significant delay impact of complexity and multiple stakeholders.

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**3.4 LBL project management and governance**

- 3.4.1 I would firstly like to comment on the high level of knowledge and understanding I encountered amongst the LBL staff I interviewed in connection with the project. This is distinct from what I have encountered elsewhere amongst some public sector clients, where there is often very limited understanding. A wide range of skills and knowledge is required for overall understanding of these very complex schemes: procurement, property and contract law and practice; project finance and accounting issues; commercial and public service business and economic appraisal; design, construction and facilities management; as well as knowledge in relation to the specific service or services involved. Although obviously local authorities take specialist advice on at least some, if not all, of these matters, internal competence is required to relate to this advice and decide how to act on it. A sufficient level of this competence is often lacking amongst public sector clients, but the **LBL team appear to have a very good broad understanding** of these issues. Somewhat ironically, I would suggest that it is possible that good understanding amongst client officers may lead to a slower procurement, while issues are thoroughly examined in order to achieve a better deal.
- 3.4.2 In general, I believe the **LBL team took decisions about the project effectively** in cognisance of the advice they received. There were instances when individuals felt frustrated for example by what they saw as over-cautiousness on the part of the lawyers, internal and external, but this is inevitable in such projects. It may be argued that it is the job of lawyers, and indeed accountants, to be cautious, and the role of project directors and managers to assess the advice received and take a commercial decision. Several of the LBL staff I interviewed commented along the lines that they felt they had learned this lesson for the future. Indeed, some of the LBL staff I interviewed displayed a generally very positive attitude to examining their experiences in procuring this project, with a view to identifying how they personally and the organisation as a whole might improve.
- 3.4.3 It is the case that there was **insufficient allowance for contingency** in the timescales in at least one key stage of the project and also for financial contingency in the affordability analysis. There was no time built into the plan for the final central government approvals process, whereas it is normal for this to take at least a couple of months. In the event this was not a significant delay factor, both because the approvals were granted quite quickly via DCMS, and because other issues were being resolved meanwhile, but it could have caused delay and time should be allowed for future projects.

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- 3.4.4 In relation to financial contingency, it should be noted that the final affordability analysis produced an LBL revenue budget requirement very close to that assumed in the application for PFI credits. However, the cost of the project did increase significantly from that identified at OBC stage, as is common to the vast majority of PFI schemes (and indeed for most other public sector investment projects!), although it was substantially offset by a reduction in the cost of financing. The issue of providing contingency within the affordability analysis is difficult to address for a number of reasons, although clearly it should be regarded as best practice to do so. It is often the case that fully prudent contingency budgeting for major investment projects has an adverse impact on the chances of the project being approved to proceed at the initial stage, because it is judged to be poor value for money, unaffordable, or simply “too expensive”! The LBL financial advisers, Robson Rhodes, have commented that the scope for including contingency within the application to DCMS for additional credits was limited by a requirement to keep any increase within 20%, although, as noted above, additional contingency budget proved unnecessary at this stage. It is the job of accountants to encourage prudent contingency budgeting, but it has to be reluctantly accepted that the cultural impetus works against this. LBL staff I interviewed commented with some degree of resignation that the group schools PFI project is being progressed without contingency within the affordability analysis, and an inevitable affordability gap is opening up.
- 3.4.5 The **multiplicity of partners on the client-side** of the project is relevant to its difficulty. There was a need to establish and maintain the engagement of the PCT and its health sector stakeholders, which must inevitably have taken time and effort by the LBL team. Some interviewees expressed a degree of frustration about this, and I set out below the views of PCT staff about lack of engagement at vital points in the project, which must be taken seriously. However, it must be concluded that it was managed at least reasonably, because it was not a significant delay factor, and the partners were retained within the project, despite its difficulties.
- 3.4.6 Overall, given the complexity of the project, the immature nature of the market, the inexperience of many LBL key staff at the stage when the project started, and the inevitable limited resources and changes in personnel, I found much to admire in the way the project was managed. It may be the case that some matters could have been progressed quicker, but possibly only at the expense of protection from risk and the achievement of value for money. Given that there was no absolute deadline by which the project had to be built, it may be argued that it would not have been reasonable to accept such additional risks or potential disbenefits. It is also relevant to note at this point that the Consortium perceived that price and affordability were considered by the LBL team to be more important than speed of procurement. Overall, I conclude that, at least for the procurement period up to financial close, as considered for my review, client **project management was reasonably well balanced in the circumstances.**

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- 3.4.7 However, there are some points I would make for consideration in the management of future similar projects. Firstly, it appears that **project management was not formalised** by the application of a systematised approach, such as “PRINCE”<sup>1</sup> or a similar methodology. Although the full PRINCE system is often viewed as too extensive and detailed, and therefore inappropriate for many local government projects, there are a number of similar but simplified versions of this type of methodology that are being adopted as standard practice for project management within many local authorities. The system should include formal arrangements for reference to more senior levels of management (see also 3.4.9 and 10 below), and escalation of corrective action, where monitoring indicates that progress is not being made in accordance with the project plan. Also, for particularly large and risky projects, some form of “Gateway Review”<sup>2</sup> may usefully be applied. LBL should consider formalising its project management arrangements along these lines.
- 3.4.8 Secondly, LBL had **no consistent senior management presence** focussing on the project, in the role of “project director” or “sponsor”. The Head of Culture was involved at the beginning, but did not maintain an ongoing personal representation in the negotiation phase. A new post of Head of Partnerships and Investments was created in 2004, in response to the need to manage a range of significant projects. Tony Freeman took up this post and was involved during the final year of the procurement, but was initially only appointed to the authority on an interim basis. For much of the four years of the procurement there was no detailed senior management involvement. The Chief Executive of Leisure Connection commented on this lack of direct senior management involvement in the procurement, and suggested that there were times when it might have proved helpful in progressing the procurement.
- 3.4.9 I would suggest that for all major projects, especially those with a high risk of problems or delay in procurement, there should be a nominated senior management project director or project owner, whose role is to champion the project at senior level; steer it through internal and external approvals processes; provide advice and support to the project team; be the first stage of progress monitoring; and “trouble-shoot” when difficulties are encountered. This role should be taken by someone at Assistant Director or even Director level, depending on the nature, complexity, and risk profile of the project involved. Moreover, it should not be expected that this role will be undertaken on top of day-to-day responsibilities with no impact on them. Time should be identified for the senior manager in question to focus on the project, and arrangements put in place to at least mitigate other pressures.
- 3.4.10 In addition, it is common for local authority Chief Executives to involve themselves in occasional trouble-shooting for very high profile deals, where monitoring indicates that there are significant problems or slippage. This may be more effective if it is formalised as part of the overall project management and governance system, as referred to at 3.4.7 above, rather than occurring on an ad hoc basis. More direct involvement of elected members, as described at 3.4.13 below, can also assist in a similar manner.

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<sup>1</sup> PRINCE – Projects in a Controlled Environment – formal accredited project management methodology

<sup>2</sup> Gateway Review” - a review of a project carried out at key decision points by a team of experienced people, independent of the project team – see [www.ogc.gov.uk](http://www.ogc.gov.uk) or [www.4ps.co.uk](http://www.4ps.co.uk)

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- 3.4.11 Thirdly, LBL had **no consistent involvement of a financial or accounting officer** on the project team. It is understood that a finance officer was involved in the early stages, but maybe not engaged in the detail, and in any case this did not continue. The Head of Partnerships and Investments happens to be an accountant but was involved only in the latter stages of the project and at a senior level, rather than to focus on the financial detail. Although, I do not believe this compromised the progress of the project, I do think it was a missed opportunity for an internal finance officer to gain new skills and personal development. This sort of work represents a very good training ground for relatively junior finance officers, and is often a catalyst for them to progress into more senior management roles. I also think that joint working on financial aspects of this type of procurement can sometimes produce more robust analysis and / or creative approaches, although I must emphasise that this is a general point. I do not believe the Downham Lifestyles project in particular suffered any detriment in this regard. It may be the case that financial advisers' fees could have been reduced if this approach had been taken, although not by a sufficient amount to offset internal costs. In any case, the key issue is about the development of internal skills and expertise for application to other work. I would recommend the inclusion of a finance officer within project teams for future such schemes, with time identified and formally allocated for them to spend on the work.
- 3.4.12 What is also evident, is that LBL staff have to take over management of the contract in its construction and operational phases, and to do this they need an understanding of the basis of the deal, the contract terms, and the payment mechanism. It is important to find some way of providing continuity and / or handover of knowledge between the project procurement team and those responsible for subsequent **contract management**. Although contract management is not the primary focus of this report, I would comment that there appear to be some ongoing difficulties in this aspect of the Downham Lifestyles project as its construction phase progresses. This has arisen partly due to unavoidable lack of continuity of project management within LBL. However, it also relates to concerns expressed by the Consortium about the number and extent of design changes requested by client stakeholders, and the fact that at the time of writing PCT representatives do not consider themselves to be in a position to agree to the details of the facilities to be provided for their users. The PCT have commented that this situation may lead to problems in the operational occupation of the accommodation by health partners.

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- 3.4.13 I also suggest that there may have been insufficient **detailed involvement of key members** in the decision-making and project governance arrangements. I understand that the Lead Member for Culture was regularly updated via liaison meetings with the Executive Director, that the Mayors' briefing included regular reports on the management of the project, and that local members of Parliament were also informed via the MPs' briefing process. I have reviewed many of the briefing notes prepared for these purposes. However, it is increasingly common for elected members to be more directly involved in strategic procurement, via inclusion on project boards or steering groups, or by taking part in bid evaluation work. I have worked successfully in this way on PFI projects, sometimes involving opposition as well as ruling group members. I have found it to be helpful and supportive, and that despite political differences in some cases, members have worked effectively together and with officers in progressing the project. Outside the formal public meeting environment they are in a better position to provide constructive challenge, and with this involvement they may also be able to assist more positively with the management of community stakeholders and the central government interface. I might even suggest that this sort of joint working has had positive spin-offs for future communication and work on other initiatives. On the other hand, this way of working does not fit well with the management, governance arrangements and culture of all local authorities; it is only suitable for application to some projects; and it is onerous for the individuals involved. It is for the relevant senior members and officers within LBL to consider whether such an approach might be appropriate, both in general, and on a project specific basis.
- 3.4.14 In the case of the Downham Lifestyles project, it has been suggested by several of the LBL staff I interviewed that communication between officers and members was not always as effective as it might have been. It appears that such communication was often via individual officers, rather than on a team basis with the opportunity for the various staff involved to state their views. This may have resulted in misunderstanding about the risks of the procurement timescale, and possibly a false impression of the likelihood of concluding the deal within set dates. The more direct type of involvement suggested in the previous paragraph would be likely to engender better understanding to militate against communication failures, although there are of course other ways of improving communication. I would recommend LBL to consider involving members more directly in future strategic procurement projects, or introducing other alternative measures to ensure that effective communication is maintained.
- 3.4.15 Finally, it is relevant to comment on **project resourcing within LBL**, and the pressures this caused. Two factors worked in combination. Firstly, the project assistant left on maternity leave during the procurement and the project manager took a decision not to replace her, on the basis that financial close would happen quite soon, and it would be onerous to introduce a new member of the team at this stage. In the event, of course, financial close was delayed and, with the benefit of hindsight, it might have been better to replace this officer. The PCT in particular feel that this compromised the way in which detailed matters were addressed, and communication between LBL and themselves. Secondly, the delay to financial close meant that the project manager was working concurrently on another major project during the latter stages of the procurement, with inevitable increases in workload and pressure.

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**3.5 PCT involvement**

- 3.5.1** The inception of the Downham Lifestyles project **predates the existence of the Primary Care Trust (PCT)** within the NHS. The earlier stages of the project, including initial proposals and the output specification for ITN purposes were dealt with by the predecessor organisation the Primary Care Group (PCG). I interviewed two individuals on behalf of the PCT, but one of them was only involved for the last year or so of the procurement.
- 3.5.2** It should be noted that the involvement **of the NHS may be seen as both fundamental** to the concept of the project, and also key to its approval by central government. It is understood that an early submission, prior to the OBC, was rejected due to lack of wider public service inclusion. The PCT have commented that extension of the expected timetable for the procurement has impacted adversely on service development by general practitioners, who continue to operate from inappropriate premises, and have been unable fully to implement enhanced health provision as demanded under NHS modernisation initiatives
- 3.5.3** It is also relevant that the **PCT represented a range of stakeholders** in this process, including general practitioners, dentists, and the mental health trust. It thus needed to co-ordinate not only with LBL and the Consortium, but also with these various devolved and diverse parties who will be occupying accommodation within the project.
- 3.5.4** Interviewees from **both LBL and the PCT expressed frustration about the experience of working together** on the project. LBL staff commented that it was difficult to engage the PCT as key points in the project where input was required, whereas PCT staff felt that there was too little effort to involve them, especially in the detail of design of the premises they are to occupy. However, both parties agree that initially engagement was more successful, whereas it deteriorated as the procurement progressed. Both parties commented on the limited staffing resources that they each had to work on the deal (see 3.5.10 below), and it is inevitable that this compromised the frequency and depth of engagement that they were able to sustain. The PCT have commented that they found the input of Andy Murray particularly helpful to the project. They also consider that the input of the project assistant, who subsequently left on maternity leave, was important, and that her loss to the project compromised consideration of, and consultation about, some of the more detailed aspects of the design and facilities provision.
- 3.5.5** It is ironic that, whilst LBL is now concerned about the time the project took in procurement, the PCT view is that the authority was focussed primarily on achieving affordability in the initial stages of the project, with timescale becoming more important as the procurement progressed, at the expense of other aspects such as the quality of the deal, and time for stakeholder engagement. Interestingly, the Consortium view concurs with that of the PCT on the point about LBL focus on price and affordability. As mentioned at 3.4.6 above, I would suggest that this was the proper priority in the circumstances.

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- 3.5.6 From the PCT perspective, they feel that they were not in a position to influence the **selection of the preferred bidder**, and that LBL focussed too much on affordability at this stage. This contrasts with the view put forward by some LBL staff, who cited suitability of design for health users as one of the reasons for the selection of the preferred bidder, and also as a reason why there was little serious consideration of reverting to the second bidder when negotiations with the Consortium ran into difficulties. On a more positive note, the PCT were pleased with the choice of preferred bidder, despite their concerns about the process.
- 3.5.7 Perhaps the most serious issue for the PCT relates to their control over the **detail of the design of the accommodation** their stakeholders are to occupy. They wanted the output specification for the project to include “room data sheets” giving details of the facilities. Different approaches are adopted to this issue within PFI schemes. The purist approach is not to include room data sheets at the Invitation to Negotiate (ITN) stage, on the basis that they are not in accordance with the principles of output specification, and that this sort of detail should be left for the bidder to propose. The alternative view is that the precision of room data sheets is necessary, and that their inclusion makes evaluation easier. PCT representatives feel very strongly that the latter approach is the correct one. In any case, it is understood that indicative room data sheets were eventually produced for the health accommodation by the technical advisers, at the cost of the PCT, as part of the ITN documentation.
- 3.5.8 However, concern about this issue continued through the procurement process, and remains unresolved at the time of writing, since it is understood that the final versions of these room data sheets for the health accommodation have not yet been agreed and accepted by the PCT. It was decided at senior level between LBL and the PCT to proceed without this agreement in order to avoid further delay to financial close. Whilst it is not unusual to proceed without this detail at ITN stage, I would suggest that it is very unusual to reach financial close without finalising the design in this way, and it cannot be regarded as good practice. The absence of this agreement exposes the public sector to a very high risk of increased costs arising once these details are agreed. The Consortium representatives have commented that they were not made aware of the fact that the PCT had not agreed to the detail of the facilities until after financial close.
- 3.5.9 The PCT also feel that they were excluded from the opportunity to **bid to central government for additional funds to address affordability**, although they do accept that they were advised by LBL that they would need to make a separate approach to the Department of Health. The PCT chose not to do this because of the uncertainty of the process and the possible adverse impact on timescales.

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- 3.5.10 The PCT accept that they were **under-resourced to deal with the project**, and they also suggest that LBL suffered from similar difficulties, particularly following the departure of the project assistant who worked with the project manager to address matters of detail. Concerns within LBL closely mirror those expressed by the PCT on this point. Both the PCT representatives and also one of the LBL interviewees suggested in particular that the limited PCT staffing resources compromised communication with the general practitioners and other health service providers who will be moving into the facility. Although it is considered that communication with the various health service providers was maintained in the early stages, including direct consultation between Consortium and the relevant practices about the design of the accommodation and the facilities to be provided, this was not sustained throughout the procurement. I would comment that projects involving devolved stakeholders with independent views to express will always require a relatively high level of resources devoted to communication and consultation. This certainly applies to schools schemes, where there is a need for ongoing and detailed engagement with school staff and governing bodies, and also with parents and pupils. I suggest that this is one of the lessons to be learned for the future.
- 3.5.11 The PCT feel that they had a good **relationship with the preferred bidder** in the early stages of the negotiations, but that this got somewhat worse as the procurement progressed. They felt aware of tensions within the Consortium, between the Consortium and LBL, and also sometimes between the Consortium, LBL and themselves. They were frustrated by the way information was presented to them, particularly in relation to the lack of room data sheets. They refer to instances of inconsistency and lack of collation, and feel that the requirements on them to check for accuracy and completeness were unnecessarily onerous.
- 3.5.12 However, despite these negative aspects of the procurement process, the PCT do wish to emphasise that they are **pleased to be involved with the project**, and they commented in particular on the positive impact of PFI credits on the affordability of the project, compared to LIFT schemes. Their stakeholders are looking forward to the prospect of occupying their new accommodation.
- 3.5.13 The PCT Director of Finance feels that improved communication is an important lesson for the future: issues should be shared openly between partners, rather than one party having to find out by reading the press! This view echoes that expressed by the Consortium in relation to management of press coverage. The wider point about communication is clearly related to the resourcing of the project within both organisations, and underlines the need for adequate project management staffing for this sort of complex collaborative procurement. However, the PCT Director of Finance also commented that the **local authority and the PCT work well together in Lewisham**, compared to his experience in other areas. The PCT and the local authority continue to work closely in many other development and operational areas, and relationships remain good.

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#### 3.6 The private sector Consortium bid team

- 3.6.1 Firstly, in order to provide context for this report and their contribution to it, the Consortium wish to make the following statement about their position in relation to the procurement process, and also about the Downham Lifestyles project itself:

**“The process of concluding the detailed negotiations of a PFI contract is always challenging for all of the parties involved and, in spite of the standardisation of contract drafting, seems always to include a considerable number of "unexpected" elements which can be time-consuming and complex to resolve. The Downham Lifestyles project is an important and complex project which included its fair share of "unexpected" elements. While, with the clarity of hindsight, things might have been done more quickly and / or efficiently, everyone worked very hard and in good faith. Marginal improvements in speed might have been achievable but it is extremely unlikely that these would have produced a result that is otherwise in any material way "better". All parties worked diligently and productively while under considerable pressure, to produce a good result for the local community and the London Borough of Lewisham, in a timescale that realistically reflects the complex context and content of this project.**

**The Consortium, comprising Leisure Connection and Linteum, and its private sector partners, is proud to be involved in a long-term partnership to provide services to the communities of Lewisham, and believes that the positive working relationship between the Authority, the PCT, their advisers and the Linteum / Leisure Connection team has been a major contributory factor to the excellent progress towards the delivery of the service which has already been achieved."**

- 3.6.2 The preferred bidder chosen to be the private sector provider to design, build finance and operate the Downham Lifestyles facility, described as **“the Consortium”** in this report, comprises Linteum Ltd. providing 50% of the risk taking equity investment, bringing together the partnership, and establishing the special purpose vehicle company (SPV) for the purposes of the Downham project; Leisure Connection Ltd. also providing 50% of the equity investment, and as leisure operator, with Emcor as facilities management sub-sub-contractor; and Alfred McAlpine PLC as builders; plus Barclays Bank as funders. Both Linteum and Leisure Connections have invested considerable funds as risk capital into the project, representing 10% of the total requirement.
- 3.6.3 For the purposes of this review, I interviewed one of the directors of Linteum Ltd., who was also the bid manager for the Consortium, and the Chief Executive of Leisure Connection Ltd.

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- 3.6.4 Although the Consortium structure is perhaps more complex than some other PFI scheme consortia, given the involvement of separate sub-contractors for leisure provision and facilities management of the building, and the nature of the sub-sub-contract relationship between these two parties, and also the co-ordinating role of Linteum, it is not unusually to have similarly complicated structures within the PFI market. The structure is both the same as that used for the other leisure projects the Consortium is engaged in, and also as stated in its pre-qualification questionnaire submission for shortlisting purposes, and in its bid in response to the ITN, and again in its Best and Final Offer (BAFO). A further factor is the inclusion of the Industrial and Provident Society within the structure of the Consortium, which is a common basis for leisure contracts, but rarely used in other types of PFI.
- 3.6.5 There are two issues about the structure of the Consortium and the SPV that may be seen as relevant to the procurement process. Firstly, certain matters caused some delay in the final stages of approvals due to concerns raised by the external auditor. However, similar issues arise on many PFI projects, and in any case the delay caused by these points was not long in the context of the overall procurement timescale, and the approvals process in particular.
- 3.6.6 The second issue about the Consortium relates to the small size of the Linteum partner. This is a company whose founding owners are the only two directors, one of whom was the bid manager on behalf of the Consortium. LBL officers and their advisers were aware of the nature of this company during the early stages of the procurement, and at the point of appointing the preferred bidder. Although some concern was expressed at that stage about the implications for the procurement, this was outweighed by the benefits offered by the Consortium, and the favourable financial evaluation of its BAFO. In this context, it should be borne in mind that organisations taking this role in PFI projects are often small, and that SPV companies by their very nature do not have established economic standing before and at the start of the schemes they are formed to deal with. This is the nature of the PFI market. However, it is the case that the Consortium, at the time of its appointment as preferred bidder for the LBL project, had already closed one other leisure PFI deal. This represents significant experience in an emerging market. It is also relevant to note that LBL appointed the Consortium as a whole as preferred bidder, rather than an individual component or person involved in the Consortium. The Consortium has commented that it believes strongly that there was no delay arising as a result of the input of Linteum.

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- 3.6.7 Several of the client-side officers and advisers that I interviewed for this project expressed the view that the **nature, size and capacity of Linteum** did have an adverse impact on the procurement process, and the time taken to close the deal. They cite three separate issues that they see as flowing from this: the personal nature of the relationship where the owners of the business are so directly involved; the fact that all matters needed to be resolved via a single individual, which they described as sometimes creating a “bottle-neck”; and the resourcing of advice taken by Linteum, including the lack of financial advisers. The Consortium refute the LBL side view of this; they consider that there was no adverse impact on timescales arising from the nature and size of Linteum, and their capacity as bidder. From the work I have done for my review and the production of this report, it is impossible for me to make any definitive assertion on this matter, but I comment on each separate point below.
- 3.6.8 With regard to the **personalisation of the relationship**, this point is echoed in the comments of PCT representatives about their relationship with some LBL officers. It may be argued that the owners of a business are likely to approach negotiations differently to corporate employees, and seek to drive a harder bargain, but on the other hand they may also be more committed, whilst corporate employees may be equally incentivised by management targets and bonus arrangements. Moreover, the degree of personalisation, positive or negative, may relate more to the characteristics of the individuals involved, rather than their positions within their organisations. From my (personal) experience, I would comment that PFI procurement is a very stressful process, and almost everyone involved fails at some point to maintain a calm, rational, and professional approach. Indeed, I have even known several people who have become ill as a result of the stress involved. Moreover, many difficult issues have to be faced, and painful things often have to be said during the course of negotiations. What is important is that everyone is able to recover from this and move on, initially to conclude the deal, and then to make it work. I comment in the next section on the need for LBL and its partners in the Downham Lifestyles project to make sure they are able to do this quickly and effectively.
- 3.6.9 In relation to the **concentration of bidder decision-making in a single individual**, I would comment that this too is double-edged. Whilst it may sometimes result in a bottle-neck, it may have the benefit of clarity and certainty. I have had adverse experience in dealing with large corporate bidders where many individuals were involved, with resulting confusion, conflict and delay while they all conferred and sought to reach agreement. Some contacts of mine have suggested that a number of PFI bidders have been effectively over-resourced for the work involved, and there is evidence that the consequently very high bid costs have compromised company financial performance and stability in some cases. Also, the Chief Executive of Leisure Connection pointed out that for most schemes, whatever the size and nature of the bidding consortium, there is usually a single project manager responsible for co-ordination, via whom all decisions must be taken.

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- 3.6.10 As for the **resourcing of advice**, there is a need for all bidders to balance expediency and the requirements of the deal against the cost of advisers' input. This relates to the point above about bid costs; these have to be paid for, and effectively form an overhead on PFI contracts in general. One particular point mentioned from the client side was the lack of financial advisers to the Consortium. However, the Consortium did employ financial modellers, whom they consider to be sufficiently qualified and experienced also to provide financial advice. In addition, they were able to draw on considerable internal financial expertise within both Linteum and Leisure Connection, so they consider that this aspect was covered adequately. The Consortium has commented that it contains a number of individuals with extensive experience in the PFI market, and they do not believe that there is any evidence that their access to financial or other advice was a delay factor. Notwithstanding this, I would comment that it is perfectly proper for public sector clients to consider the advisers appointed by bidding consortia as part of the selection process and appointment of preferred bidder; indeed the government effectively encourages this. It is also possible to seek to influence such appointments, and LBL could have done so in relation to the lack of financial advisers to the Consortium.
- 3.6.11 It is important to reflect on the Consortium view of the two factors identified as causing delay, which they were in the best position to influence: the change of bank and the concurrent negotiation of the Brent deal. With regard to the **change of bank**, they were reluctant to abandon NIB as a partner given the investment of time in working with them on the deal, and thus were keen to explore compromises. Once it became clear that it would be impossible to conclude the deal with NIB, the Consortium approached two other banks: Royal Bank of Scotland and HSBC. It proved impossible to reach a basis to proceed with either of these banks, despite their established position in the PFI market in general, and the Consortium was initially reluctant to approach Barclays, as they were working with a competitor. They were also conscious of the limited and immature market for funding leisure PFI schemes, and anxious to identify an alternative before ceasing their relationship with NIB. The Consortium cited the time it took to progress the change of bank as something that could have been handled better in the procurement, by all parties to the deal. I would comment that the difficulties experienced with this issue are common in PFI, and illustrative of both the immature market for leisure schemes at the time, and the development of standard contract terms.

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- 3.6.12 In relation to the concurrent **negotiation of the Brent deal**, the Consortium does not consider that this had any major impact on timescales. I cannot fully support their position, as I do believe that this was a significant delay factor. Clearly, it is a matter of degree. However, whilst I sympathise with the adverse attitude to this within LBL, I can also appreciate the commercial decision faced by the Consortium, as expressed at 3.2.15 above. It is inevitable that these situations will arise within limited markets and with intensive and extensive negotiated procurement processes.
- 3.6.13 I would like to comment further on the **lack of clarity in communication** on this matter between the parties, at two points. Firstly, LBL feel that the matter was not communicated until sometime in the autumn of 2004, whereas the Consortium view is that they made their strategy clear in July. The Consortium also stated that their decision to prioritise negotiations on the Brent deal to close was predicated on their understanding of the inability of LBL to be in a position to close by September 2004, given the required approvals processes and the need for agreement with the PCT. In the event, of course, the Brent deal was not closed until six months after this assumed timescale. Secondly, the Consortium understood that LBL had accepted their offer to base the Downham Lifestyles project on Brent drafting, and consider that this agreement was subsequently rescinded. These are important issues, which, with the benefit of hindsight, should perhaps have been clearly confirmed in writing immediately following discussion.
- 3.6.14 There was specific concern within Lewisham about the implications of the Linteum project manager handling both concurrent deals, and this was expressed in published quotes to the press. I comment below on the Consortium view of the handling of the press interface, but it should be remembered that a similar situation existed within LBL, where the project manager was also working on the group schools PFI.
- 3.6.15 During my interview with the Consortium representatives, we discussed a range of other issues and I would like to highlight the following views expressed:
- Firstly, as noted at 3.4.6 above, the Consortium feel that the approach **of LBL officers in general gave the impression that speed was not of the essence** in this procurement, but rather that price affordability and value for money were more important. As mentioned at 3.5.5 above, the PCT concur with this view. I wish to emphasise that this seems the proper approach in the circumstances. It should be noted also that LBL officers do feel that they clearly communicated the authority's position about the need to progress the project as quickly as possible.
  - The Consortium cites the **developing standard contract drafting**, and the issue of the third version of the Standardisation of PFI Contracts (SOPC3)<sup>3</sup>, as a significant factor. They feel that this led to revisiting of previously agreed points during the negotiations. LBL officers were also frustrated about the reopening of issues within the negotiations, although they consider that this was due to the passage of time and changes in the personnel advising the Consortium, rather than as a result of SOPC3.

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<sup>3</sup> Published by HM Treasury July 2004 – deviation from this drafting is subject to formal central government approval via derogations for the granting of PFI credit funding

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- The Consortium considers that some of the **press coverage** of the procurement process was unfortunate and unnecessary, and this view is shared by a number of interviewees on the LBL side. The PCT were also disappointed to have read about matters in the press rather than being informed directly. The Consortium suggested that it would have been appropriate to address the press relationship jointly as a partnership, with arrangements to share statements in advance. I endorse this view, and I have often seen such arrangements formalised by agreement in writing as part of the preferred bidder appointment. A joint approach would avoid one partner being unaware of forthcoming press coverage. It would also help to ensure that all the facts, and a full picture of the position, are made available to the press for reporting purposes, and to foster proper accountability for the disbursement of public money, and the resulting provision of public services.
- What is even more important is the point made by the Chief Executive of Leisure Connection who emphasised the **need to re-establish a positive relationship with the press in relation to the project**, in order to ensure good coverage, with clear publicity about the services and facilities available, in the interests of a successful opening of the facility and subsequent usage. Without this, the health and social benefits of the project, and also its optimum commercial operation, may be compromised. I agree strongly, and comment further in the following section 3.7.
- The Chief Executive of Leisure Connection supported the view of many of the interviewees, which I share, about the **need for management engagement** in this type of procurement at the most senior level (see 3.4.8, 9 and 10 above). In addition to the need for a “project director”, he suggested that the client LA Chief Executive might beneficially have occasional but systematised direct involvement in high profile, high risk projects. He explained that he had found this helpful in his previous role as Chief Executive of LB Barking and Dagenham.
- Another point made by the Lintum project manager was about the **difficulties faced by bidders in being frank** about the prospects for a forthcoming procurement process in which they hope to participate. This was discussed in the context of timescales for the Downham project, which the Consortium always considered to be unrealistic. They felt constrained by their position as a bidder, and that it would not have been in their interests to make this clear at the time. I would agree that this was almost certainly the case, and I would comment that the same is probably true of any similar concern that a bidder might feel, for example about affordability. Sadly, in these circumstances it seems that frankness is unlikely to be the best policy.
- The Consortium wish to emphasise the **importance of relationships** especially within a partnership contract which is to last more than 30 years. They are concerned to establish and maintain positive joint working with LBL and the PCT in order to progress the build phase and move on to successful operation.

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#### 3.7 Other points

- 3.7.1 There is a personal point I would like to make as part of this report. I feel a considerable connection to the borough of Lewisham, having lived for many years initially in the Hither Green area and then in Forest Hill, although I now live in the north of England. I know Downham quite well as I have family connections with someone who owns and runs a shop on the Bromley Road there. I know many people who work for LBL, or have done so in the past. I have done various pieces of consultancy work for the authority, including an initial presentation many years ago on the possibility of applying PFI to leisure provision. In a sense therefore I was involved at the very beginning of this process, as well as at this latter stage. From my work on this review, although its purpose has been to investigate the procurement process rather than to examine the Downham Lifestyles project itself, I have developed enthusiasm for the facility that is being built. I can appreciate the **many benefits that the Downham Lifestyles project will bring to both the immediate Downham locality, and also the wider area**. It is an innovative project that represents the fruition of the original vision of integrated public service provision. All parties should feel proud and excited to have contributed to it, and it is already attracting considerable positive interest in both the public sector and the leisure industry across the country. I suggest that it is important for everyone involved in the partnership to put aside the difficulties experienced during the contract negotiations and focus on the future. This leads me to my final point.
- 3.7.2 During the course of this review, although I have not focussed on contract management, and my brief was to consider the procurement process to the point of financial close, I have been made aware of a number of ongoing issues that give me some concern. Whilst some of these points may not be individually of great significance, others are important, and in combination I feel that they indicate that the problems experienced during the procurement continue to affect relationships within the partnership. It is vital that any **negative feelings and past difficulties are now set aside in order that all parties may work effectively together** on the construction phase and move smoothly on to the opening and operation of the facility. This joint working should include liaison with the press to ensure the best possible publicity for the launch of Downham Lifestyles. Although I remain concerned about ongoing project management as the build phase progresses, I do believe that all parties recognise the need to move forward positively, and that there is a collective will to do so.

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#### 4. SUMMARY OF LESSONS FOR THE FUTURE

- 4.1 The following list is a summary of the points identified in the report as lessons for the future, in each case cross referenced to the relevant paragraph in the text of the report.
- |  | Report Reference    |
|--|---------------------|
| ▪ Exploit public sector power at point of preferred bidder appointment – close down as much as possible in advance of negotiations and confirm in letter agreed before approval of appointment | 3.2.9               |
| ▪ Assess bidder team and advisers, and seek to influence if concerned  | 3.2.9 & 3.6.10      |
| ▪ Communication of important negotiation points in writing   | 3.2.16 & 3.6.13     |
| ▪ Commercial decision-making – balance advice but be prepared to set it aside  | 3.4.2               |
| ▪ Timescales contingency – including for final approvals process   | 3.4.3               |
| ▪ Budget contingency / affordability envelope  | 3.4.4               |
| ▪ Formalise project management and consider gateway process  | 3.4.7               |
| ▪ Project director role and senior management involvement  | 3.4.8, 9 & 10       |
| ▪ Project accountant role  | 3.4.11              |
| ▪ Continuity / handover for contract management  | 3.4.12              |
| ▪ Member involvement and communication   | 3.4.13 & 14         |
| ▪ Full client-side agreement to details of accommodation and facilities prior to financial close   | 3.5.7 & 8           |
| ▪ Provision of resources to manage stakeholder communication and consultation  | 3.5.10              |
| ▪ Partnership approach to dealing with the press   | 3.5.13, 3.6.14 & 15 |

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#### APPENDIX A

#### List of interviewees who contributed to the project

Janet Senior	LBL Director of Resources	29 September – briefing meeting 14 November – progress meeting
David Welch	LBL Project Manager	11 October – interview 14 November – follow up meeting
Tony Freeman	LBL Project Director (from August 2004)	19 October – interview
Penny Rinta-Suksi & Nadeem Arshad	Bevan Brittan, external legal advisers to LBL	20 October – interview
Helen Glass	LBL Principal Lawyer Contracts	26 October – interview
Bob Anderson & Lucy Miller	Robson Rhodes, external financial advisers to LBL	27 October – interview
David Steele & Graham Farrant	Director, Linteum & Bid Manager Chief Exec., Leisure Connection	October – telephone call 22 December – interview
Paul Kelly	4Ps	7 November – telephone interview
Andy Murray	LBL procurement team	11 November – telephone interview
Jeff Moore	Lewisham PCT	2 December – telephone interview
Tom Breen	Lewisham PCT	16 December – telephone interview
John Appleyard	Stoke Bentilee Project Team	9 December 2005 – telephone call and subsequent email 4 January

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**APPENDIX B**

**Schedule of key dates in the procurement process**

<b>EVENT</b>	<b>DATES</b>	<b>FROM OBC APPROVAL</b>	<b>NOTES</b>
Outline Business Case submitted	February 2000		
Outline Business Case approval	July 2001		
Official Journal of the EU advert	December 2001	5 months	Delay due to central government requirement for standardised approach – 4Ps work on ITN docs & market consultation
ITN issued	April 2002		
Invitation to submit Best & Final Offers	January 2003	1 yr 6 months	
Best & Final Offers received	March 2003	1 yr 8 months	
Preferred bidder appointment	June 2003	1 yr 11 months	
Linteum appointed as preferred bidder Brent project	September 2003		
Preferred bidder letter signed	20 October 2003	2 yrs 3 months	Letter signed 4 months after appointment

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<b>EVENT</b>	<b>DATES</b>	<b>FROM OBC APPROVAL</b>	<b>NOTES</b>
NIB position on demand risk identified as problem	January 2004	2 yrs 6 months	
NIB replaced by Barclays	End April 2004	2 yrs 9 months	4 months to resolve change of bank NB – plus additional negotiation time
Linteum focussing on closing Brent deal	Summer 2004 onwards		
Increased PFI credits	October 2004	3 yrs 3 months	
Brent project closed	March 2005		3 years from OBC approval
Stamp Duty Land Tax – Budget change	March 2005	3 yrs 8 months	
Commercial close	28 June 2005	3 yrs 11 months	

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<b>EVENT</b>	<b>DATES</b>	<b>FROM OBC APPROVAL</b>	<b>NOTES</b>
DA issues raised: <ul style="list-style-type: none"><li>• Accounting treatment</li><li>• IPS structure and rate relief</li></ul>	June 2005	3 yrs 11 months	
SDLT point resolved	June 2005		
DA issues resolved	03 August 2005	4 years+	
FBC submitted	10 August 2005	4 years+	
Central Government approval & promissory note	02 September 2005	4 yrs 1 month+	
Financial close	06 September 2005	4 yrs 1 month+	3 yrs 8 months from OJEU advertisement