

SAVING PERTH CITY HALL

The Present Case: 2014-2016
– *The sequel to Designed to Fail:*
The Past Case 2004-10

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Founding Member: British Council of Shopping Centres (1984)

Founding Member: Society of Property Researchers (1986)

Founder of Spifox (1983), the Scottish property and building industries' charity

Member: International Real Estate Federation British Chapter Management Committee (1982-86)

Chairman: UN 1987 International Year of Shelter Scottish Appeal Committee

Fellow of the Royal Society for the Arts Fellow of the Society of Antiquaries in Scotland

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INTRODUCTION

The detailed earlier history, '*DESIGNED TO FAIL*', covered the disastrous competition that wasted the years from 2004 to 2010, as well as huge expenditure by the Council and disappointed developers. In retrospect it appeared as having been 'designed to fail', i.e. as no more than an exercise to demonstrate that no viable re-use could be found for adaptation of this renowned 'Beaux Arts' style building, which therefore should be demolished and replaced by a City Square. The consultancy arm of transatlantic surveyors Colliers produced an impressive report which concluded that a City Square offered the most beneficial use of the site, on the strength of which the Council applied to Historic Scotland for Listed Building Consent for demolition, only to be refused on the grounds that potential interest for reuse had not been fully explored, so the property had to be remarketed.

That resulted in another half-hearted competition, in which my Perth City Market Trust emerged as the only serious bidder, but we never succeeded in engaging constructively with the Council, who seized the first opportunity of cancelling the project and calling in new consulting surveyors, Jones Lang LaSalle, to review options. They produced an even more impressive report, which concluded that a City Square offered the most beneficial use of the site, justifying resubmission of an application to Historic Scotland (now Historic Environment Scotland) to grant Listed Building Consent for demolition, which again met with refusal on the same grounds as two years previously; that the council had still not fully explored potential commercially viable interest. So Jones Lang were instructed to launch a final marketing campaign which, as all interested parties recognized, could not be allowed to fail.

Wariness of the council's persistence with demolition as a default strategy was intensified by their extraordinary move, openly publicised, to approach HES for the specific purpose of obtaining prior agreement that, if the council remarketed the building yet again but still found that none of the interested parties' proposals were acceptable, then HES would at last grant demolition consent. This obviously wasn't feasible, even if HES had agreed, because no developer or investor would enter a competition merely to be used as a stalking horse; i.e. knowing that the council had only to declare all the entries unsatisfactory – of which it would be sole judge – in order to achieve its real purpose of knocking the building down! Could any local authority's intentions in dealing with the private sector illustrate a worse case of acting in bad faith?

So JLL's brief came out and, with a new professional team, I formed a new company, Perth Market Place Ltd., to give it one more go. We were persuaded that even the Council's 'hard core' must have accepted by now that HES would never concede, and at that stage my historic perspective had not yet confirmed those 'designed to fail' suspicions. Furthermore, following the Perth City Market Trust debacle, my intensive studies of Food Market Halls world-wide (well supported by the National Association of British Market Authorities) had filled me with a passionate conviction that here we had the ideal reuse for City Hall, offering unique social, cultural, retailing and city planning benefits as well as saving the building. So my misgivings in regard to the Council's predisposition were overcome. Our determination to succeed was much encouraged by progress in the early stages.

Hence the narrative of ***The Present Case*** can be confined to just one year, from the lead-up to the Council Meeting on 1st July 2015 to the fall-out from its counterpart on 22 June 2016. Approaching so closely to the present day, this account cannot end conclusively or satisfactorily from any of the principal parties' points of view; therefore it must remain provisional, pending an amicable resolution, as PMP very much hope, failing which a reasonable settlement. In either event, an ultimate Addendum to this chronicle is likely. Meanwhile, the facts speak for themselves: indeed, they shout out loud!

This narrative has certainly progressed far enough by now, both as a record of these recent events and as a sequel to the earlier history, for the purpose of combining them to provide an overall view from 2004 to 2016. The whole dossier will then be available, in strict confidence, for submission to relevant authorities. Meanwhile, for avoidance of doubt, no public disclosure will be made nor any formal action taken until constructive responses and consultations between PKC and PMP have resulted in a satisfactory resolution or settlement, thereby consigning the dossier to confidential

archival storage; or else until every possible means of voluntary closure has been exhausted, compelling action at a higher level as a last resort or release for purposes of official inquiry.

To reiterate, I am extremely anxious to avoid any action which might cast PKC and PMP in adversarial roles, the intention remaining simply to present a full record and restrict sight of this chronicle to those who can help promote an amicable, swift, and appropriate settlement.

So to start with the front-page story in the Perthshire Advertiser on 26 June last year, beneath the headline, **“Market Place bid is City Hall frontrunner”**, which featured a statement by the Council Leader: “The future of Perth City Hall has been an issue of discussion for a number of years, both locally and nationally. Throughout this time this council has remained true to our conviction that the only viable alternative to a city square was a plan which could be sustained and delivered for the benefit of the city without ongoing support from public funds. No matter what the outcome of the discussions next week are, the priority must be to move forward with a solution for the former City Hall which helps to drive forward our vision for a dynamic and modern city centre.” PMP were duly encouraged.

The Courier on the same date, beneath the headline, **“Call to back food hall bid”**, reported: “Councillors who once voted to knock down Perth City Hall are now being asked to retain the historic landmark and approve plans to convert into a market hall”, with favourable comments by David Littlejohn, ‘head of planning and development’. But the report adds: “However, the market hall plan is not a done deal and the council has pointed out that its plan to demolish City Hall and create a civic square remains on the table if no decision is made next week.”

The assessment by Jones Lang LaSalle, the Council’s consultants, had concluded: **“JLL believes the Perth Market Place proposal would provide a deliverable and viable re-use for Perth City Hall.”**

So PMP looked forward to the decisive Council Meeting on 1st July with confidence. But it proved an anti-climax – even a non-event. The PA on 3rd July reported under the headline **“Councillors defer City Hall decision”**: *“PKC officers appeared to have made a clear recommendation for Councillors to back a bid by Perth Market Place Limited to turn the B-listed building into a food hall in a report published before Wednesday’s meeting of the full council. A separate bid to transform the City Hall into a luxury 4-star hotel by the Seventy Group had also been considered before officers came to their conclusion. But SNP group leader of the council Ian Miller surprised councillors when he made a motion to defer a decision on the matter until October 7th. He said he remained “unconvinced” either of the two bids were viable and that he did not want to be “forced into making a poor decision”. Councillor Miller then asked PKC’s Chief Executive, Bernadette Malone, to go back to Historic Scotland and inform them of his concerns. Historic Scotland had insisted the Hall be put on the market after it denied the council planning permission to bulldoze the building back in 2012.*

Councillor Barrett proposed an amendment that the council should go with the recommendation of the report and choose Perth Market Place Limited as the preferred bidder. He argued that the food hall bid appeared to be a “fully funded” proposal. He pointed to the fact that it had the support of Groupe Geraud, the largest operator of local authority markets in Europe. Councillor Barrett added that the council should not be trying to change Historic Scotland’s mind about blocking the proposed demolition.

And Councillor Willie Robertson said he was “absolutely amazed” to hear the motion proposed by Councillor Miller. “This is so embarrassing”, he said: “we have been at this for years and years. And what are we going to do? We are going to defer it to see what Historic Scotland has to say. We are making ourselves look stupid. I urge you, go with the paper and stop pussyfooting about.”

Councillor Dave Doogan then argued that a decision to go with the food market hall would be “reckless” and stressed the council had to be sure the hall did not become a “liability” in the future. But Councillor Willie Wilson questioned why Councillor Miller wanted to go back to Historic Scotland, as if their opinion on the matter might have changed. “If there has been a change in policy, we ought to have been told about that”, he said. He also questioned the wording of Councillor Miller’s motion, which mentioned that he wanted to engage with “other relevant agencies” “What are other relevant agencies?” he asked. “Who else is in the game?”

Councillor Barbara Vaughan then said she wanted to see more information about the potential economic benefit both bids could bring to the city. She noted the report seemed to be light on this information considering the council had been asked to complete an economic analysis of the bids.

At this point PKC’s Executive Director (Environment) Jim Valentine told the room that what information was in the report was merely a “summation” of another report on the economic benefits. There were howls of protest then after Councillor Robertson spoke out again. This time he was questioning why this information had been left out of the report. “I have to say I’m really disappointed,” he said. “We have had a report put in front of us and it is lacking information. It’s disgraceful. It’s just not right.” The motion for deferral was carried by 26 votes to 9.”

That ends the PA report. It should be explained that throughout the presentations by PMP and Seventy Group and subsequent debate, there was no inkling of what was in store; no reason to doubt that the Council would conclude with a vote on the recommendation in the officers’ report as normal. But Councillor Miller’s ‘Motion Paper’ had actually been composed and printed prior to the Meeting, ready for distribution to all present on Councillor Miller’s instructions once he had brought the debate to an end by announcing his dissatisfaction with both bids.

Confusion ensued in the press gallery and bemusement on the public benches. After eighteen months’ intensive, expensive effort, the PMP team were left hanging in the balance. The Geraud UK MD and project manager, with decades of experience in working with local authorities, returned to Liverpool very despondent and cynical – and incredulous, as we all were, that apparently it had not occurred to any of the council leaders or chief officers to take the opportunity of this visit at least to make the Geraud representatives’ acquaintance. With some difficulty, PMP and Montagu Evans managed to persuade Philip Lamb that, despite this snub, it was worth persevering.

Mercifully, the crisis was resolved internally between the Council and the Chief Officers, resulting in an excellent letter on 29 July from Jim Valentine to Montagu Evans for PMP, specifying the additional information required for clarification, under three main heads, covering the Food Market Hall’s trading operations, Geraud’s finances, and the PMP/Geraud corporate tenancy structure. Montagu Evans replied comprehensively on behalf of PMP and Geraud on 20 August, with extra relevant material included, conclusively answering all the searching questions raised. These exchanges were copied to the Heads of Legal, Finance, Planning & Development. ***[If this dossier***

does eventually need to be disclosed or cited for reference, then those two letters dated 29 July and 20 August 2015 will be reproduced in full.]

A report was duly prepared for presentation to the next Council Meeting, on 7 October. On the 2nd the Courier anticipated the news in a story headlined, “**In with the bricks: listed building to be granted reprieve**”, sub-headed, “**Council to be advised to get behind food market hall proposal**”. It stated: “Councillors will be asked next week to adopt a market hall plan as the front-runner for a new use for the listed building. The plan must still prove it has the necessary financial backing to become a commercial reality...” and followed that the next day with the headline, “**Opening date for city hall food hall should be known very soon**”. It stated: “A reopening date for Perth City Hall in a new guise as a food market hall will be known within the next three months. It emerged yesterday that if councillors back the market hall plan at a meeting on Wednesday, an essential element of lease negotiations will be setting out a timetable for works to the building and a completion date.

“The recommendation in a report by the council’s head of planning and development, David Littlejohn, is that councillors confirm Perth Market Place Limited as the preferred bidder to operate the city hall as a food market. The viability of the project had been a concern to councillors and led to the deferral until the coming week to raise the issue with Historic Scotland. The heritage watchdog told the council their position remained unchanged.....Guided by this stance, the council officials feel the market plan has a greater possibility of becoming a reality than the proposal for a boutique hotel.....” Given continuing concerns about the specific funding and implementation arrangements, and to mitigate against the potential risk of failure to conclude a lease, it is proposed that Perth Market Place Limited be required to provide supporting evidence of their ability to conclude the lease within an appropriate timescale”, says Mr Littlejohn in his report. “With this in mind, within three months of the award of preferred bidder status, they would be required to provide details of where the investment in the project would come from and how long it would be until the food hall became a reality. The council would require all these pre-conditions to be satisfied before granting a long ground lease”, said Mr Littlejohn.

That last sentence, despite best intentions, contained two dangerous misnomers which duly proved toxic. A long ground **Lease** cannot be granted, completing the entire legal and financial formalities with insertion of the Date of Entry and execution of the Lease documents, until the comprehensive conditions in the preceding **Agreement for Lease** have been met; whereas any special **pre-**conditions, as PKC were imposing here, have to be satisfied even before the draft Agreement is presented. These ‘preconditions’ were essentially concerned to convince PKC of PMP’s resources and competence; but once that preparatory stage was passed, PMP could not conceivably proceed directly to meeting PKC’s demands on the major issues of funding and site programming, thereby incurring quasi-contractual liabilities as well as heavy expenditure, without any form of draft contract – nor could any other development company have done.

Not only was PMP expected to enter into commitments with no commitment by PKC but, without even a sight of the comprehensive conditions that are necessarily detailed in an Agreement for a 125 years Lease, it was impossible for PMP or its prospective funding partner to enter into such binding commitments – nor could any other development company have done. How were they supposed to know the terms of the proposed deal which they were required to substantiate! But not only was

there never any sign of a Draft Agreement: there was no reference to an Agreement for Lease at any stage within PKC's planned procedure.

But PMP were persuaded not to intervene when conferment of preferred bidder status seemed imminent. The Courier's account of David Littlejohn's report to the council meeting on 7th October had gone on to disclose that "following a two-year rent-free period, from date of entry, Perth Common Good Fund could expect an annual rent of £20,000 plus a potential 7.5% of the turnover generated by a market hall", which went down well. An unexpected controversy had also helped, arising from publication in the PA on 4th September of the following critical and highly revealing story under the headline:

"Why did PKC not commission proper economic impact study into reopening Perth City Hall?"

"Perth and Kinross Council appears to have done next to nothing to assess the economic benefits of reopening Perth City Hall, the Perthshire Advertiser can exclusively reveal today. The council is still considering bids from Perth Market Place Ltd to turn the B-listed building into a food hall and from the Seventy Group to convert it into a luxury five-star hotel. Council leader Ian Miller decided not to select a preferred bidder at the last meeting of the full council in July, stating he had concerns about the commercial viability of both bids. Property agents Jones Lang LaSalle (JLL), who were asked to complete an analysis of the two bids, had recommended the council choose Perth Market Place Ltd as the preferred bidder. JLL decided on scores for the bids in terms of proposed use and design, commercial terms, funding and commercial viability – but did not give scores on the economic benefits. Stating in their report they were not "economic specialists", JLL said PKC would have to investigate the economic benefits of each proposal as part of a separate assignment. PKC ended up marking the PMP proposal 12 out of 20 for its economic benefits and the SG proposal 18 out of 20.

But at the July meeting Councillor Barbara Vaughan noted the report seeking approval to select PMP as the preferred bidder seemed to be light on economic information. And PKC's executive director (environment) Jim Valentine appeared to suggest the report was merely a "summation" of another report he had prepared on the economic benefits of the two bids. Following the meeting, the PA lodged a Freedom of Information (Fol) request to see "all reports PKC prepared on the economic benefits of the two bids" and "all other information PKC has collected to assess the economic benefits of the two bids".

After weeks of delay, the council has finally responded to our Fol request by handing over heavily redacted copies of economic reports prepared by PMP and the SG. But the only other document passed on was a copy of an internal email which was sent to PKC's head of development and planning David Littlejohn and enterprise manager Alison Seggie on April 21. The brief email, sent from an unknown person within the council because the Fol team chose to redact the sender details, dictated how the two bids should be scored. The email, which a council spokeswoman said, in a statement this week, had been written by "a council economic development professional" read: "David [Littlejohn], I would score [the Seventy Group] 18 [and the Perth] Market Place 12.

"Market Place – Estimated footfall on a weekly and annual basis is provided together with an estimate of the economic impact from the construction phase. There are references to the impacts that markets have on additional expenditure in town centres, together with case studies, but this is not illustrated in further detail in terms of the potential impacts that the Market Place, with its

projected footfall, could have on Perth.” And it continued: “[Seventy] Group – a detailed analysis is provided of the potential impacts across operations, construction phase, and market segments including an estimate of additional tourism expenditure. Potential GVA [Gross Value Added] and an estimate of the number of jobs supported are also detailed.”

It appears that the content of this email was simply copied and pasted into both the JLL analysis of the two bids and the report that was presented to the councillors at July’s meeting and passed off as PKC’s economic analysis of the bids.

Perth City South Alexander Stewart has described our FoI findings as “unbelievable” and said that he expected the council to be provided with a lot more information when the matter comes back before elected members in October. He told the PA: “I think it is unbelievable that, if true, Perth and Kinross Council has done no economic analysis whatsoever on the two bids for the City Hall and the fact that it has taken a whole month to reveal this speaks volumes. They are going to have to bring something to bring before us in October after it was deferred again at the last full council meeting.”

The PA asked PKC why it had not done more to assess the potential economic benefits of the two bids. A spokeswoman said: “Economic benefits are assessed using a combination of qualitative evidence from similar projects elsewhere and a quantitative calculation using standard economic multipliers based principally on construction expenditure, jobs created and estimated visitor/ guest expenditure. Council economic development professionals checked the information provided and allocated a score accordingly. Because of the way economic modelling works, in general terms, the project with the largest capital expenditure creating the most jobs will always score more highly. Hence, in this case, the hotel scored more highly than the market proposal. Therefore, there was no reason to spend money to commission another assessment that would have reached the same conclusion. However, when taking into account the wider range of factors such as funding and deliverability the final score for both projects was very close, hence both offers being presented to members.”

What “qualitative evidence” from what “similar projects elsewhere”? What “standard economic multipliers”? And what has “the largest capital expenditure” got to do with “creating the most jobs”? Does any of this actually make any sense at all? No doubt “another assessment....would have reached the same conclusion” if, like this one, it was produced by one of PKC’s anonymous “economic development professionals”, but what if it were an independent analysis and assessment, commissioned from a recognized economist in this sector? Was the real objection not so much having to spend money as the risk of undermining some alternative PKC strategy?

Certainly, any objective, expert assessment would have been bound to take account of all the economic information set out in PMP’s presentation, including the detailed works programme, full financial appraisal and QS cost plan, job creation, as well as the support from the National Association of British Market Authorities and the National Federation of Market Traders – all of which was suppressed by the Council’s anonymous in-house source -- in contrast to the explicit credit given to SG’s relevant data. This is so reminiscent of the treatment accorded to rival developers’ submissions as recounted in the previous volume!

Furthermore, the vital letter from Montagu Evans to Jim Valentine on 20 August, replying to his final questions, concluded:

“I do hope that the information provided here is sufficient for your present needs, but if you require any further clarification, we would be happy to provide this. We would strongly urge a meeting with you and your colleagues to fully inform you on our plans and to provide complete clarification.

“Should we receive a positive response from the Council, our clients are prepared to finance a further economic study if this would assist, albeit we feel that the information provided within our initial submission and supplementary submission should more than cover any questions raised.”

At last, the council meeting on 7 October resolved to proceed with PMP as preferred bidder, but with the utmost ill-grace. The motion succeeded almost by default: for whereas few councillors actually spoke in support of the Food Market Hall project, not one could by now think of any alternative. Such lack of understanding and absence of enthusiasm was deeply depressing. It was clearly expressed by Councillor Alan Grant: **“It may seem strange that I have seconded this bid as the survival of the City Hall is an anathema to me. This is not the end of the process, it is just a stage: they (Perth Market Place Ltd.) will have a lot to do to satisfy us.”**

This was the language of an adversary rather than of a prospective major investor and civic partner. The presumption, if not the intention, was that we would fail. The burden seemed wholly to fall upon PMP to satisfy the Council, who were under no obligation to cooperate or give any support. How serious was the Council’s appointment of PMP as preferred bidder while showing no interest in meeting PMP or Geraud UK or seeing the plans -- by arranging for an interview or for a presentation on the project?

That remote, grudging attitude was officially spelt out in Jim Valentine’s confirmatory letter on 13 October addressed to PMP c/o Hugh Rutherford of Montagu Evans, the substance of which must be reproduced here in full.

“At the Perth & Kinross Council meeting on 7 October 2015, it was agreed that Perth Market Place Ltd be confirmed as the preferred bidder for Perth City Hall to operate as a food market. It was also agreed that they provide supporting evidence of their ability to conclude the lease, as follows:

- a. Written confirmation from Geraud UK Ltd. of their commitment to enter into a sub-let from Perth Market Place Ltd and details of the partnership.**
- b. Written confirmation of the process for the establishment of the new entity for operating the market on a day-to-day basis, along with an outline of each party’s role and responsibilities.**
- c. The provision of suitable Letters of Intent from shareholders to establish levels of shareholders’ support for investment in the project.**
- d. A planning consent and building warrant timetable for works to the building, along with dates for estimated completion of the works and opening of the proposed venture.**

It is essential that this information is provided as quickly as possible and no later than 13 January 2016. It was further agreed that the Head of Legal Services seek to agree the terms of a ground lease with Perth Market Place Ltd’s solicitors by 13 January 2016. In order to commence this process, the Head of Planning and Development will arrange a meeting of all relevant parties, and

thereafter instruct the preparation of draft heads of terms to be forwarded for your consideration.”

While not positively hostile, the tone throughout is at best unsympathetic: totally devoid of goodwill or any assurance of support or sense of confidence or commitment on PKC's part. It was presented to PMP as a challenge rather than an invitation. Apparently the universal law of commercial transactions, “A willing buyer and a willing seller”, did not apply in Perth.

Even more worrying was the recurrence of procedural misnomers, which fatally handicapped progress, e.g. “their ability to conclude the lease.” As that would be impossible to demonstrate unilaterally, what must have been meant was ‘ability to conclude an **agreement** for lease’: but no draft of such an agreement was forthcoming, nor even contemplated.

Point ‘a.’ was onerous and unreasonable in the absence of any form of conditional contract from PKC. How could the MD of Geraud UK be expected to seek Group board approval in Paris to such a “commitment” on the strength of no more than this problematic correspondence? Geraud's natural response was: “Yes, delighted, but what's the deal – where's the contract”?

As for requirement ‘c.’, how could individual shareholders of a European company be required to enter into such personal contractual liabilities without any sort of a reciprocal undertaking from PKC? In any property transaction, a draft contract is entered into which embodies the agreed basic terms with attached details of all the respective parties' necessary conditions and requirements, that have to be satisfied before the contract becomes binding. That draft contract can take different forms as befits the nature of the transaction: e.g. missives for house purchase in Scotland, or for a long lease of 125 years a draft agreement for lease. But here, PMP were called upon to satisfy PKC's requirements in full **before** any decision by the Council to confirm PMP's appointment was taken and with no assurance that it ever would: i.e. an unconditional commitment with nothing in return -- not even a conditional commitment. As that was plainly, utterly, impossible, was it ever serious?

Point ‘d.’, of course, would invariably be covered in an Agreement for Lease. Likewise the options under consideration to satisfy point ‘b.’. In the absence of a draft Agreement for Lease to start working on, a top-level meeting to clarify all these issues was urgently requested by PMP and Geraud, to whom it seemed strange that PKC had not already taken this initiative.

Indeed, with reference to the final paragraph of Jim Valentine's letter of 13 October, what was the sense, in the absence even of a draft Agreement for Lease, in proceeding directly to adjustment of the terms of the Lease itself? As already noted, numerous necessary conditions and undertakings have to be expressed or implemented before the solicitors are in a position to tackle the draft Lease -- and all would be embodied in the preceding Agreement. Once all the requirements of the Agreement for Lease have been accomplished then, and not until then, it is an elementary task for the respective solicitors to settle the clauses of the Lease – the draft of which will have been attached to the finished draft Agreement -- but to go through that exercise while points in the Agreement are still unresolved is meaningless.

Equally meaningless was insertion of a draft “heads of terms”, which was merely a memorandum, lacking the force and effect as well as the relevance and most of the material substance of an Agreement for Lease as a precursor to the draft Lease. But PMP and Geraud had to press on,

particularly as the ordained meeting with the lawyers had been hastily arranged for 16 November in order that progress could be seen to have been made ahead of the Council Meeting two days later. This required another trip and overnight stay in the Station Hotel by Philip Lamb, MD of Geraud Markets UK, as well as a joint excursion from Edinburgh for Hugh Rutherford of Montagu Evans and Derek Nash of Lindsays.

Yet it all proved a waste of time, in fact harmful, as David Littlejohn, who had intended to preside, was indisposed and no other Chief Officer was available to replace him, thereby delivering another snub to Philip Lamb – even more brutal than on 1st July. So he, Messrs Rutherford and Nash and I (PMP director) were left alone with a PKC solicitor and surveyor to tinker with a useless draft heads of terms. As there was nothing useful for us all to do, the meeting degenerated into general wrangling and recrimination. Nobody could have guessed that this was an officially designated conference between PKC and their ‘preferred bidder’.

Trying to make the best of it, Geraud produced its own draft ‘Heads’, whereupon PMP followed suit; then each party felt obliged to circulate its ‘revised’ version, taking account of (or ignoring) the other brands, so that by December no fewer than five principal or revised drafts were floating about – all to no apparent purpose.

Had JLL still been acting for PKC, they would surely have identified urgent production of an Agreement for Lease as the only way forward. It is indeed strange that large fees were paid to Colliers and then to JLL to prove that the building was not worth saving; but a few years later, when the opportunity was presented for JLL to play a vital role supervising progress with PMP – the role in which they excel every day – their services were dispensed with. It is clear in retrospect that PKC’s dispensing with the services of commercial property consultants when most needed proved lethal.

PMP made a final, desperate plea to David Littlejohn on 15 April 2016, when all sides were preparing for the decisive Council Meeting on 22 June. He did not reply, but instead Patrick Mair, the PKC solicitor, argued that:

“A draft ground lease was issued on 13 November so that this could be considered along with the heads of terms at a meeting on 16 November. The draft ground lease covered all of the matters detailed in the heads of terms.” No doubt it did, but that was no help to us: neither to serve as a form of draft contract for funding purposes nor in answering Jim Valentine’s outstanding questions. Patrick Mair continued:

“My own view is that the principal commercial terms of this deal are covered in the ground lease (although clearly there are points to be resolved) and that rather than prepare a development agreement or agreement for lease, an offer to lease (with the draft lease annexed) to cover the standard issues such as production of titles and searches would suffice. This could be drafted by either us or Lindsays if negotiations are resumed in June and I see no need for time to be incurred on this now while negotiations are suspended.....” Then why didn’t he produce a draft Offer to Lease four months ago in October instead of suggesting it only once it was too late? Moreover, In face of his disinclination to progress, why finally was failure to make progress blamed on PMP?

His admission that **“clearly there are points to be resolved”** undermined his case; for there were indeed numerous points to be discussed and resolved – precisely those which comprised the normal

repertoire of conditions that should have been detailed in a Draft Agreement for Lease! So why, instead, improvise makeshift procedures that could only frustrate progress? How could there ever have been any possible objection – once any special *pre*-conditions had been met -- to starting conventionally with a draft Agreement for Lease, identifying all the detailed conditions and requirements to be fulfilled before a binding contract can be concluded, thereby creating a secure relationship as a basis for proceeding all the way through to completion of the Lease? But PMP's appeals and representations were ignored.

Yet, although PMP was certain that PKC's *modus operandi* could not possibly work, a point had been reached where a crucial decision had to be taken: whether (a) to press the argument in the hope of winning the responsible officials round, thereby running the risk either of a fatal falling out or of running out of time; or (b) to defer the issue by cooperating in order to concentrate on securing confirmation of the prospective appointment at the June Council Meeting and sorting out the legal documentation afterwards. As urged on all sides, the latter course was followed, but it proved self-defeating, for the very reason that, as had been argued earlier, without a draft agreement for lease or any other form of provisional contract it was impossible to provide the sensitive information and exacting undertakings demanded.

Meanwhile, so far as lack of any kind of "a deal" and PKC's general indifference permitted, PMP and Montagu Evans were doing everything possible to provide answers to the questions asked by Jim Valentine in his letter of 13 October 2015, for which he had set a deadline of 13 January 2016. Accordingly, Hugh Rutherford of Montagu Evans wrote to Mr Valentine on 12 January:

".....I enclose a letter from Geraud UK Ltd answering the various questions raised in your letter of 13 October 2015. As you may be aware, we have previously returned the revised draft lease for your legal team's further consideration. We also enclose for completeness a copy of the programme and description outlining the works.....and planning timetable, which again we have already submitted to your team. I can confirm that my client, Perth Market Place Ltd., are making significant progress in relation to their bid and will continue to work with your colleagues.....up until the Council meeting on 24 February..... I have today also received confirmation that your team wish to undertake an Economic Benefit Analysis relating to the Food Market, and we would be delighted to assist the independent team with information to help them assess the impact of my clients' proposals for this project.....on Perth and its City Region.....[etc.]"

But that elicited no reassurance. So, remorselessly, the situation continued to deteriorate as the Council Meeting on 24 February approached. The PA reported on the 19th under the headline, **"Public shut out of city hall talks"**: "Council bosses have decreed that the next meeting where the future of Perth City Hall will be debated by councillors should be held in private. The next meeting of the full council on Wednesday [24] will consider a report entitled 'Perth City Hall' but bosses have refused to publish it. And it has been recommended the public and press be excluded from the meeting 'in order to avoid disclosure of information which is exempt.'

But who were these "Council bosses" who decreed that this particular Meeting of the full Council must be held in private and the report which was then to be presented and debated must not be published, even though it concerned the future of a publicly owned building which was the subject of immense public interest and a decade of controversy? The identity of whoever was responsible for these decisions was never revealed. As the report was on my company's performance and

prospects, I expected to be issued with a confidential copy, or at least supplied with one upon request, but was refused, for no reason other than the general excuse: “to prevent disclosure of sensitive commercial information”. Consequently, I could not see it until picking up all the papers on the day of the private Council Meeting, but it was obvious from first reading that the Depute Chief Executive’s report (all 17 pages stamped “Exempt”) contained no more “sensitive commercial information” than had the corresponding documentation for the equally decisive Council Meetings in July and October which had, as usual, been published on the Council’s website five days prior to the Meetings -- that were, of course, held in public. (*Likewise, the subsequent, conclusive Council Meeting in June was open to the public and the Chief Officer’s report had been published the week before, yet it contained as much if not more sensitive commercial information than previously.*) So the official excuse for banning the public from the Council Meeting on 24 February, and banning publication of Jim Valentine’s report until after the event, was irrelevant.

Trying desperately to retrieve the situation, PMP issued a statement, as reported in The Courier on 20 February: “Throughout the last four months, since the council meeting in October, the council chief officers concerned have worked very closely with the professional team, Perth Market Place Limited..... However, we do appreciate that there is a certain amount of work still to be done. We are fully confident of a successful outcome eventually.” Brave words but uttered without much conviction.... For by then it had become clear that the only compelling reason for the council to close the meeting on the 24th to the public and not to publish the report in advance was to prevent me and my colleagues from seeing the report and taking any action in response to whatever damaging comment it contained until after the event.

So it proved. Para. 3.2 of the report states (under “Conclusion and recommendations”):

“Given the concerns as regards funding and associated risks, the Council at the meeting of 7 October 2015 set out clear pre-conditions as a means of ensuring that it had adequate assurances that the proposal was viable. PMP and Geraud UK were in attendance and therefore aware of the Council’s concerns and what was required from them within the agreed timescales. Despite this, these pre-conditions have not been fully met.” This statement contained several grave misrepresentations, yet it was the key to the recommendation which followed and was duly upheld, suspending PMP’s nomination as ‘preferred bidder’.

The Council did **not** “at the meeting of 7 October 2015 set out clear pre-conditions”. Until Montagu Evans, on behalf of PMP, received Jim Valentine’s letter of 13 October we had not seen or heard of his four “pre-conditions”. There was plenty of time between the 7th and the 13th for chief officers and council leaders to confer and draft the letter. To allege that, because I and the MD of Geraud UK sat on the public benches throughout the Council meeting, therefore we must have been aware that the Council would demand (e.g.) “provision of suitable Letters of Intent from shareholders to establish levels of shareholder support for investment in the project” would be merely ridiculous if the intention and effect of the allegation and consequences for my company were not so deadly serious.

Equally deceptive was “within the agreed timescales”, which implied that PMP had not only agreed the terms of these preconditions (which we had been forbidden to see until the week after they and our alleged agreement to them had been approved by the Council) but had even agreed fixed time-limits for their fulfilment. These allegations were presented entirely devoid of evidence -- because,

of course, there wasn't any. But they fully explain why the report could not be published and why the meeting on 24 February had to be held in private!

To quote from the Courier's front-page story on 25 February, headlined **"City Hall rescue plan collapses"**: "A plan to breathe new life into Perth City Hall has collapsed. The latest shock twist in the decade-long saga was revealed after a closed-doors meeting on a bid to convert the Edwardian building into a food market. Council leader Ian Miller confirmed lease negotiations had been suspended after the applicants failed to convince the council of the financial viability of the scheme. He described it as "extremely disappointing" and said he shared public frustration at the inability to end the saga. A council chief has been tasked with exploring "all options" for the future of the listed building. The decision effectively ends the latest rescue plan for the vacant listed building, leaving the way ahead unclear. Following a closed-doors meeting it was left to the council leader, Ian Miller, to explain why they had decided to throw out the only plan currently on the table. "When councillors agreed to select a preferred bidder for the city hall site in October we were extremely clear that there were a number of pre-conditions the bidder needed to satisfy before we could agree to any lease", said Mr Miller. "These pre-conditions were necessary to address our ongoing reservations about the long-term viability of the bid. It is extremely disappointing that the bidder has failed to comply fully with these within the time-scales set, providing vague and inadequate information in relation to key questions about the available funding to support their proposals....I am not prepared to simply continue to make incremental progress with the bidder, when they have failed to provide the most basic of assurances. Suspending negotiations on the lease at his time will allow officers to bring back a report on all possible options for the site, so that councillors can make an informed decision at our next meeting on the best way forward."

Numerous passages quoted in these pages and other references to additional information recently supplied by Montagu Evans in response to specific PKC requests are more than enough to demonstrate that Councillor Miller's allegation that PMP had "failed to provide the most basic of assurances" was without merit. Also questionable was his claim to feel "extremely disappointed", considering that he had never shown the slightest interest in PMP or in the concept of food market halls which are so successful and vital to urban life elsewhere in Britain and Europe. Nor did he ever wish to meet me, although my home and place of business have been in central Perth since 2003, just as he declined every opportunity of meeting Philip Lamb of Geraud -- yet now declares he is "extremely disappointed".

The PA's headline on 26 February, "Shock Move on City Hall – Saga goes on as food market plan thrown out" also made it harder for PMP and Montagu Evans to persuade Groupe Geraud that suspension did not mean termination. But the PA added a helpful statement from PMP:

"PKC's policy of attracting capital investment surely includes the £4 million which our funding partners wish to invest in refurbishing the City Hall and converting it as Scotland's first professionally managed food market hall, which will revitalize Perth as a shopping destination as well as create a long-overdue social hub for the city centre. Accordingly, while we fully recognize the council's need for confidence in verification of our financial resources, the council surely wishes to demonstrate its reciprocal confidence in our funding partners' commitment. But we have suffered a severe disadvantage throughout these negotiations in being required to provide specific funding obligations without any undertaking from the council that our compliance would ensure success as prospective

lessee. Our funding partners have been expected to enter into onerous corporate liabilities merely for the council's consideration, with no assurance as to the eventual outcome. Having been nominated 'preferred bidder' PMP anticipated that, in accordance with normal practice, we would proceed with the drafting of an agreement for lease, subject to all outstanding conditions, which the parties then proceed to purify. That course of action ensures mutual confidence, security and satisfaction, whereas to be told that every precondition must be met in advance of any decision by the council has placed an extreme strain on our prospective investors' confidence, which in turn has rendered our reinforcement of the council's confidence unduly difficult. So it has proved self-defeating! It explains why, as councillors complained, "negotiations had not progressed sufficiently to enable final terms of the lease to be presented for consideration by the council. It also explains how simply the situation can be remedied, to restore mutual confidence and progress to a successful conclusion without further delay."

But this was too technical to influence public opinion and elicited no official comment because the council would never admit that PMP had a case or recognize that confidence was a two-way street. PMP and Montagu Evans continued to make personal representations to the chief officers concerned, the last being from PMP, at Geraud's express request, to David Littlejohn, Director of Planning and Development, on 5th April, reading:

"Is it possible, please, for us to meet, however briefly, either tomorrow (Wednesday) p.m. or early a.m. Thursday? The Chairman of Groupe Geraud has been in Liverpool this week, conferring with Philip Lamb, MD of Geraud UK, who is consequently authorized and anxious to resolve the outstanding issues quickly to the Depute Chief Executive's satisfaction. For that purpose, Philip looks forward to coming here for a meeting with Jim Valentine and yourself (et al.); but meanwhile, to ensure that all parties at the meeting concentrate on the essentials, you and I must agree the agenda, which is precisely the object of my present request."

This was crucially important, and the Chief Officers still had plenty of time, fully eleven weeks prior to the date of the Council Meeting in June to which they would be reporting, but David Littlejohn's response on the 11th was disheartening:

"I can only act in accordance with Council's instruction and that instruction was to suspend your preferred bidder status pending a report to the Council in June. In that report Jim Valentine will update options available to the Council which will include recommencing negotiations with you, with a strict time-table for completion. Demolition is no longer an option [it was one of the four options in Jim Valentine's report!], so in some respects progress has been made. I'm sorry I can't be more helpful at this time, but I am sure matters will progress in some form after June."

But that concluding sentiment had been rendered unattainable by his rejection of my request for an emergency consultation, which effectively prejudiced the final outcome.

Thereafter, nothing more could be done until 17 June, when the Report from Depute Chief Executive Jim Valentine for presentation to the Council Meeting on the 22nd (9-16/279) became accessible on the PKC website, whereupon it was seized upon by PMP in consultation with Hugh Rutherford of Montagu Evans, to spend the weekend drafting a formal response to Jim Valentine that was sent (cc. David Littlejohn) on Monday the 20th -- in time for him to take it into account on presentation of the Report, or at least for the Councillors' debate.

It was ignored. But for the record, here it is – cut where necessary in order to avoid duplication of arguments already incorporated into the foregoing narrative, and lightly edited to fit into this context. Each of the Report’s principal criticisms of PMP’s proposals and performance is quoted and followed by challenges and rebuttals drawn from the earlier narrative.

“On point 1.2: **Council was informed that not all of the lease pre-conditions had been met by Perth Place by the agreed date.**” They were not “lease pre-conditions”, but simply four questions, relating to the financing, planning and programming of the project – although so far as the lease was concerned they could have been about anything -- which PKC arbitrarily required to be fully satisfied immediately, even prior to PMP’s nomination as prospective Lessee. Without any PKC commitment, neither by Council resolution nor by a draft Agreement for Lease or any other form of conditional contract, it was plainly impossible to fulfil this requirement.

“On point 2.1: **Since the suspension of the preferred bidder status with Perth Market Place, there has been limited contact with either the organisation or their agents.**” That is certainly true! After the Council had chosen to suspend negotiations, anything more than limited contact was impossible. Hugh Rutherford and I both tried at least to sustain a dialogue but were refused by the same Chief Officers who then condemned us for failing to do so.

“On point 1.2: [contd.] **the Council had insufficient information with which to progress the transaction.**” The numerous references and passages quoted herein show that this allegation was without merit. Each specific enquiry at every stage was answered in full.

But there were two special reasons, both beyond PMP’s responsibility or control, why the Council had indeed failed to obtain all the information it needed. First, the refusal to produce a draft Agreement for Lease following PMP’s nomination as preferred bidder, that would have detailed the parties’ respective rights and obligations, qualifications and contingencies, all of which would have been duly negotiated or otherwise resolved, thereby supplying more additional information than the Chief Officers and Council could ever have wanted prior to taking the policy decision.

Second, the Council’s lack of personal engagement with the PMP-Geraud team and with the Food Market Hall project. If the Chief Officers or Council leaders had taken a real interest, they might have gained a great deal more information at first hand. Neither I nor Philip Lamb (MD of Geraud UK) ever met the Council leader; indeed, on two official visits here Philip Lamb did not even meet any of the Chief Officers. Nor were we ever called upon to make a presentation or face an interview. They evidently did not want to know, while blaming us for their “insufficient information.....”

“On point 2.1: [contd.] **While the Council could choose to re-engage with Perth Market Place Ltd., there is no guarantee that the outstanding issues will be resolved.**” How could it be, when the Council had never properly engaged with PMP – but was demanding a guarantee and onerous commitments from PMP while offering none? How could it be when, as is evident from the foregoing narrative, the Council had throughout frustrated PMP’s fulfilment of those issues?

Even after PMP’s fate was effectively settled on 22 June, Hugh Rutherford and I pressed for a meeting with Messrs Valentine and Littlejohn to determine if something could be salvaged, but because of holidays that could not be arranged until 20 July and achieved nothing. Nor did my final letter to Jim Valentine of 6th August, recording some of PMP’s principal concerns, all of which he

dismissed in his reply on the 17th, concluding: **“ I hope that the above responses satisfy the queries you have raised. If not, and you have any further issues with the Council’s decision to terminate negotiations with Perth Market Place Ltd. for the grant of a ground lease of City Hall then, as I advised you when we met on 20 July, you will have to make a formal complaint against the Council. I enclose a leaflet on the Council’s complaints procedure for your information.”** That shockingly added insult to injury; for I did not **“have to”** do anything of the sort, as there are more direct and effective remedies available.

PMP’s loss of two more years and estimated expenditure of £150,000, devoted to creation of the ideal means of revitalizing City Hall and the whole City centre, is not to be consigned to the Council’s own complaints procedure along with potholes in the street and administrative irregularities. It is of rather more account – and consequence.

“Confidence is a two-way street”, but the Council criticized and ultimately condemned us for failing to give them confidence in our proposals while doing nothing to inspire confidence in their own intentions. So the fortuitous opportunity to compete for the title of UK City of Culture 2021 created an alluring alternative vision, for which the Council gladly abandoned both the overt objective of a cost-free reuse for the building and the covert objective of pulling it down. Ironically, it was only because the Council was repeatedly prevented by central government from pursuing demolition that it adopted the reuse policy, which it implemented only because it had no choice and consequently without any intention that it should succeed, as is obvious throughout this dossier.

The Council may dispute our contention that the outcome represents a huge loss to the life and prosperity of the city centre but cannot deny that it represents a totally unwarranted loss to my company. The facts speak for themselves, crying out for an amicable resolution and reasonable settlement.

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