

Private and Confidential

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Dear Councillor Shuttleworth

Sale of Windlestone Hall, Rushyford, County Durham

I am writing in response to your email and attachments dated 19 October 2012, which were passed to me by the Audit Commission. In these documents you outlined concerns relating to Durham County Council's sale of Windlestone Hall.

Before responding to your concerns, I think it would be helpful for me to briefly clarify my responsibilities. My responsibilities stem from the Audit Commission Act 1998 and the Code of Audit Practice. They are closely defined. Essentially I am concerned with the financial transactions of the Council in the year of audit (2012/13), including assessing the overall arrangements which it has established to secure probity, legality and value for money.

I also give an opinion on whether the accounts give a 'true and fair view' i.e. have been drawn up in accordance with the proper frameworks and are properly supported by the underlying information. I do not have a general power to review action taken by the Council. In general I only become involved in individual cases if there is evidence of illegality or allegations of fraud or corruption.

I attach a copy of an Audit Commission publication "*Council's accounts: Your rights*" that provides more detail about my role and the public's rights in respect of the audit process.

It is in that context that I am responding to your concerns about the Council's sale of Windlestone Hall. Your main concern relates to whether best consideration was obtained as required under section 123 of the Local Government Act 1972 regarding this sale. I have considered the approach followed by the Council in relation to this issue.

My approach

To mitigate the costs of additional work to the Council, my team has worked with internal audit to review the Council's approach to the disposal of Windlestone Hall. This has involved discussions with officers and a review of relevant documentation. I have now had a chance to consider all of the information available to me and I have also considered recent case law where relevant.

The law

The law concerning the sale of Council owned land is set out in the Local Government Act 1972 (the Act). Section 123 of the Act provides:

- (1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.*
- (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.*

Findings

The two valuations referred to in your letter of £1.8 million and £1.5 million refer to the year end valuations for financial reporting purposes as at 31 March 2007 and 2008. These valuations were based on the acceptance of a conditional offer from a developer to develop the property and site for residential use. This offer was made in response to a marketing exercise carried out in 2006. Prior to the sale of the Hall in November 2011, the last valuation for capital accounting purposes was £0.9 million, carried out in January 2009.

Negotiations with this developer appear to have ended in June 2010 following confirmation of the full extent of planning restrictions to meet English Heritage's requirements. It became clear at this time that a solution involving new building in the grounds to generate sufficient funding to refurbish the existing hall, as proposed by the developer, was no longer considered financially viable. This was due to the restriction on new build imposed by English Heritage and the downturn in the property market. Consequently, it was agreed that the property would need to be remarketed.

My enquiries show that it is not clear what actions were taken by officers to actively market the property from June 2010 onwards. It also appears clear that no serious interest in the property appears to have been expressed until May 2011 when a prospective buyer contacted the Council expressing an interest to purchase the property for use as a private dwelling, with the option in future to run an equine training school.

An unconditional offer of £241,000 was subsequently received from this party in July 2011.

The decision to accept this offer was made under delegated authority in consultation with relevant Members. This decision was made following consideration of a professional valuation report prepared by an appropriately qualified and experienced in-house valuer. The valuer is of the firm belief that this offer represented best consideration for the Council because:

- The previous marketing exercise had been unsuccessful as the previous prospective purchaser could only make the site viable with enabling development which was not supported by English Heritage.
- The value of the property as a development proposition without an enabling solution was considered to be a minus figure as the estimated cost of refurbishment of the hall, of £3m to £4m, was more than the estimated developed market value.
- There was no current market for alternative potential uses i.e. care home or hotel.
- Other potential serious interest in the property as a private dwelling was considered highly unlikely due to its size, condition, location and lack of land when compared to other properties of this type.
- The valuer was satisfied that the buyer had the financial resources to renovate the property to meet all planning requirements relevant to its Grade II* listing.
- The building was in poor condition, and, if retained, significant sums would be required to keep the property watertight and maintain its survival in addition to annual repairs and security costs.

Conclusion

The sale of Council land is governed by section 123 of the Local Government Act 1972 (as outlined above). This legislation requires the Council to obtain the best consideration for a piece of land that it can reasonably obtain. Case law suggests that section 123 imposes a duty to achieve a particular outcome and not a duty to conduct a particular process. It is not a requirement of section 123 that the sale of land should involve market testing and councils would not necessarily be acting irrationally in relying on a valuation and not going out to the open market.

In this case the Council has followed its own disposal and acquisition policy, which makes provision for property to be disposed of under private treaty in cases where there is limited interest and a narrow valuation band, as was considered the position in this case. I have no reason to conclude that the in-house valuation advice obtained by the Council prior to the sale was deficient in any way. Given that the Council obtained a price for Windlestone Hall in excess of this professional valuation at the time of sale, it is not possible in the circumstances for me to say that the Council did not achieve the best consideration that could reasonably be obtained. The reasons for the acceptance of the offer do not therefore appear unreasonable but are clearly heavily reliant on the professional judgement of the valuer.

Nevertheless, the Council's approach means there is limited independent evidence to substantiate whether £241,000 represented best consideration as the offer was not submitted as part of a marketing exercise, reflecting current market conditions and known planning restrictions. In particular, without a more recent marketing exercise it is difficult to evidence limited interest and a narrow valuation band. In my view it would have been prudent on the Council's part to obtain a valuation from an independent source in the interests of transparency. This would have strengthened the decision making process.

The review we have carried out with Internal Audit, along with a parallel review by the Council's Head of Legal and Democratic Services, has also identified further weaknesses in the Council's arrangements in several related areas. Internal Audit are currently preparing a more detailed report for consideration by the Council's Audit Committee on 21 February 2013 which covers all of the areas for improvement. In light of the issues identified from these reviews both Internal Audit and the Head of Legal and Democratic Services are currently

discussing several recommendations for improvement with officers. These will form part of an action plan to secure improvement in future years. I am currently satisfied that the Council is responding appropriately to the findings of my review with Internal Audit. I do not propose to take further formal action at this stage as it would not undo the sale or result in any additional money being paid to the Council. However, if further information should come to my attention at a later date that is relevant to my responsibilities I will consider this in deciding whether further action is required on my part. In the meantime, I will monitor the actions agreed following the report to the Audit Committee on the matter.

Thank you once again for bringing this matter to my attention.

I have copied this letter to the Chief Executive of Durham County Council.

Yours sincerely



Cameron Waddell

Director

cc George Garlick (Chief Executive)