



INTERNAL AUDIT REPORT

Sale of Windlestone Hall

Internal Audit Reference 99902/2013/12

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INVESTOR IN PEOPLE

EXECUTIVE SUMMARY

1. This report relates to the Internal Audit review of the Sale of Windlestone Hall for £241K in November 2011.
2. The review was added to the 2012/13 Annual Audit Plan at the request of the Corporate Director of Resources, following the receipt of a letter of complaint from Councillor Shuttleworth sent to the External Auditor. The complaint relates to the alleged selling of the property at a price considerably lower than its value. A full and public investigation was requested into the sale.
3. In considering its response, External Audit agreed to work in consultation with Internal Audit to investigate the matter.
4. Concerns regarding the sale have also been raised by Cllr Reg Ord at Audit Committee on 22 November 2012.
5. This report details the audit findings of the joint investigation to provide an independent opinion on the appropriateness of the Council's actions regarding the sale. In arriving at this opinion, the effectiveness of systems and procedures in place to demonstrate whether or not the Council achieved best value for money from the sale have been reviewed.
6. The key findings of the review are summarised below:
 - The property is a Grade II* Listed Building set in registered parkland in a conservation area. As such, any planning permissions need to reflect the expectations of English Heritage.
 - The two valuations referred to in Cllr Shuttleworth's letter of £1.8m and £1.5m refer to the year end valuations for capital accounting purposes as at March 2007 and 2008. These valuations were based on the acceptance of a conditional offer from a building company to develop the property and site for residential use. This offer was made in response to a marketing exercise carried out in 2006. The downward valuation reflected on-going negotiations relating to planning restrictions.
 - Security and running costs including heating during the winter months were identified as in the region of £100K per annum with urgent maintenance works required identified in the region of £300K. The overall costs of renovation were estimated at £3.5 -£3.7m.
 - Prior to the sale in November 2011, the last valuation for capital accounting purposes was £900K, carried out in January 2009. This was based on previous negotiations and reflected market conditions which were in decline.
 - Negotiations with the 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 an enabling solution, involving new build 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 down turn in the property market.

- It is clearly documented that any enabling should be minimal. Consequently, it was agreed that the property would need to be remarketed.
- It is not clear what actions were taken by officers to actively market the property from June 2010. 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 'as seen' offer was subsequently received in July 2011.
- The decision to accept this offer was made under delegated authority in consultation with relevant Members, following consideration of a valuation report prepared by the Council's valuer.
- The Valuer is of the firm belief that this offer represented best consideration for the Council as there was no viable alternative to the offer to use the site as a residential unit, as any other type of use would have required extensive planning negotiations. The acceptance of the offer of £241K was considered by asset management and planning officers to be the best consideration reasonably obtainable and would therefore meet the Council's legal obligations under the Local Government Act 1972, S123, regarding the disposal of land. This view is supported by the Head of Legal and Democratic Services who has also carried out a review of the sale following a request for a legal opinion from the Corporate Director, Resources.
- The reasons for the acceptance of the offer therefore appear reasonable but are clearly heavily reliant on the professional judgement of the in-house valuer, as is the case with any disposal.
- There is limited independent evidence to substantiate whether £241K represented best consideration as the offer was not submitted as part of a remarketing exercise, reflecting current market conditions and known planning restrictions. There are few examples of similar properties of similar condition on the market or having been sold at this time.

- The Council's disposal and acquisition policy makes provision for properties 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. However, without a remarketing exercise it is difficult to evidence the limited interest and it may have been prudent to obtain an independent valuation in the interests of transparency. This would have strengthened the decision making process and reduced the risk of challenge.
- It is not possible to say if the Council would have gained a higher capital receipt had the bid from the buyer been submitted in completion but the process followed was in accordance with the agreed policy. There were risks associated with remarketing at this time. A sale would not be guaranteed as there was an explicit understanding that a remarketing exercise would lose the interest of the prospective purchaser. The decision to enter to a single negotiation disposal therefore appears reasonable given ongoing liabilities and the opportunity presented at that time.
- Systems and procedures for carrying out due diligence in relation to the buyer were limited. Checks were made on the ability of the buyer to fund both the purchase and the investment required to renovate the property however these were not adequate enough to establish that the funds were available to complete the renovation which is required.
- The 'as seen' offer was made by the purchaser having been advised that the central heating system was in working order. Prior to completion it was disclosed that this was not the case. Following negotiations with the purchaser it was agreed, as part of the contract of sale, that the Council would fund essential expenses to rectify the position. Post completion, further negotiations were held to agree the amount to be funded by the Council to fulfil its legal obligations under the contract. In total expenses of approximately £36K were met by the Council.
- Ombudsman guidance, as set out in the council's disposal strategy, requires two officers to conduct negotiations. Whilst this does not appear to have been adhered to, the strategy acknowledges that this guidance may be unrealistic for every case.
- Whilst the delegated decision process provided a mechanism for challenge on the negotiation process prior to the acceptance of the offer, there was an inadequate division of duties between valuation and sales. Decisions made following post offer negotiations were not made as a documented delegated decision. This was a significant control weakness.
- Negotiations with the development company were not formally terminated until after the offer of £241k had been received. This resulted in a formal challenge from the company as it only became

aware of the Council's intention to sell to someone else via a third party (Land Registry). The company has stated that had they been told that an alternative offer was being considered they would have made a substantial unconditional offer. No such offer has since been forthcoming. Instead the company submitted a formal complaint seeking compensation. Whilst this claim has been rejected by the Council and not pursued further by the company, the failure to terminate the original contract of sale was a significant control weakness. This issue was also investigated by the land registry adjudicator who concluded that the company had no legal rights over the land through the contract.

- Regardless of whether or not the sale at £241K represented best consideration for the Council, some of the processes and systems in place lacked clarity and transparency and the whole sale process took considerably longer than first envisaged. This has resulted in unnecessary challenge, reputational damage and additional unnecessary costs. It has been acknowledged by management that, due to both Local Government Review and a further restructure there was little continuity in terms of the officers or indeed manager supervision relating to this disposal. Management also identified that the collapse of the housing market also played a part in respect of the timescale and difficulties of delivery.
- A number of recommendations have been made to improve the internal control framework to reduce the risks highlighted through this review reoccurring. These are summarised, together with the management response, in the action plan attached. It is however acknowledged that management have already taken a number of actions to improve many of the processes and procedures in place over the last year.
- Progress on the implementation of agreed actions will be monitored by Internal Audit and reported to the Corporate Director, Regeneration and Economical Development and the Audit Committee in accordance with agreed protocols.

SCOPE AND AUDIT APPROACH

7. As the letter of complaint had been referred to the Audit Commission (now Mazars) to investigate, an initial joint review of the sale of the property has been carried out with colleagues from external audit.
8. Discussions were held with relevant key officers to establish the background leading to the decision to dispose of the property and the rationale for the decision to sell the property for £241K.

Officers consulted :

Head of Planning and Assets,
Asset Services Manager
Valuer, Asset Management
Property, Planning and Projects Manager, Legal Services
Chief Conveyancing Solicitor,
Design and Historic Environment Team Leader, RED
Head of Legal and Democratic Services

9. Our comments, observations and findings are based on a review of relevant reports and documentation and with discussions with the individuals named above. Further investigation and validation work has been carried out where required.
10. We have relied upon officers to supply all appropriate material necessary to enable us to review the sale and that such material is complete and accurate. Where we have interviewed individuals, we have taken their opinions at face value unless these could be objectively tested. We have used all reasonable endeavours to provide an objective review.

DETAILED FINDINGS

Background to the sale

11. The Cabinet, of the former county council, agreed to declare Windlestone Hall surplus to requirements at its meeting on the 26 January 2006.
12. Notice of the school becoming vacant had been given approximately 6 months previously as the school was no longer considered fit for purpose and a new school was to be built. The reported cost of the new school was £6.12m.
13. The insurance value of Windlestone Hall was £6.5m and reflects the estimated rebuild cost.

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14. Informal planning advice suggested that the building would be suitable for residential conversion. As a Grade II* listed building prospective buyers would be required to secure detailed 'listed' planning approvals for alternative uses and/or to carry out improvements.
15. The intention was to market the property whilst the new school was under construction as it was felt to be essential that the sale of this important property was well advanced, if not at the point of completion, when the relocation occurred, to minimise the risk to it.
16. The exact date of completion of the new school on a different site in Chilton has not been established but is thought to have been in September 2006.
17. The property which included 10.3 hectares (25.5 acres) of land was subsequently marketed and put up for sale by way of informal tender, in consultation with Storeys SSP Limited, with the closing date for sealed offers being 8 June 2006.
18. No considered planning brief was provided as part of the marketing.
19. In all, 13 offers were received ranging from £10K to £2.3m. The highest offer of £2.3 m was received late on the 20 June 2006.
20. Of the 12 offers received on time, 3 were shortlisted for review. A building company, although not initially the highest bidder, was selected as the preferred developer due to their financial offer, proposed scheme and track record.

Contract with Preferred Developer

21. The original offer from the preferred developer was £1.75M but this bid was uplifted to £2.3m by a letter dated 15 June 2006. This letter explained that they had been forced to submit an offer to meet the closing date without receiving their valuer's full appraisal. Having subsequently received this they felt their original offer was undervalued. Their revised offer was £1.5m for an unconditional bid on the existing Hall and an additional £800K for additional New Build Replacement Accommodation (NBRA).
22. A price of £2.3m for a conditional offer based on 13,000 sq ft of new build replacement was subsequently agreed.
23. The instruction to the conveyancing section regarding the approval to proceed with the preparation of contracts indicates that no decision was required under delegated powers, as Cabinet had already approved its disposal and details of the successful tender were to be reported to Cabinet following completion of the sale.

24. A contract was subsequently entered into with the company and the County Council on 3 July 2007. A deposit of £75K was made and a unilateral notice was registered with the Land Registry to protect the Company's interest under the contract for sale.
25. The exchange of contracts was conditional upon the relevant planning consents being granted along with the preparation and agreement of a conservation and management plan for Windlestone Hall being either satisfied or waived by the buyer in writing on or before the long stop date of 2 July 2008.
26. The contract made provision for the offer price for the NBRA to be adjusted pro rata to the square feet planning permission subsequently agreed.
27. Prior to the acceptance of the offer, written confirmation was received from the company agreeing to an overage provision. This was in relation to any planning consent being granted within a 20 year period, following the date of completion, that produces an increase in the land value. This was made to allow the Council to have a clawback provision of 50% of the uplift of the value of the land.
28. Following the signing of the contracts various discussions and negotiations were held with planning officers from Sedgfield Borough Council, including officers from the conservation team, English Heritage (EH) and officers from the then Estates section, to consider the developer's planning proposals.
29. These discussions and negotiations took considerably longer than first envisaged due to the emerging requirements of the planners, EH and the property market crash. The issue that could not be resolved was an enabling solution that would allow for new build in the grounds to balance the costs of restoration and change of use to residential.
30. The last record provided of any discussions with the company regarding their planning proposal was minutes of a meeting held 27th April 2010, where it was noted that the sale situation is likely to hinge on EH advice and financial reappraisal of the scheme. Depending on the extent of enabling development to be allowed, the company was expected to review the purchase price. The outcome from the meeting was that the Company should await guidance from Durham County Council about the way forward.
31. A letter from EH dated 4th May 2010 confirmed their advice. In summary, they concluded that, "if the applicant is putting forward their proposal as an enabling development, we would expect the site to be re-marketed at a current realistic price reflecting the condition of the building and prevailing planning constraints."

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32. An internal meeting was subsequently held 29th June 2010, chaired by the Head of Planning, to consider the position following advice from EH and legal services.
33. The main outcome from the meeting was that remarketing was unavoidable for the following reasons:
 - To be fair to other developers who bid in 2006.
 - To reflect the different economic circumstances compared in 2010 to 2006.
 - To comply with EH Guidance in justifying the need for enabling.

Actual Sale

34. The Valuer, received a phone call on 12 May 2011, from the eventual buyer, enquiring about Windlestone Hall.
35. A viewing was subsequently arranged on 31 May 2011. The following day a letter of intent to purchase the property was received.
36. The letter of intent requested a period of 60 days to reach mutual agreement on sale/purchase of the property.
37. To gain assurance that the prospective purchaser was seriously interested in the property some financial checks were carried out on the ability of the purchaser to fund the proposals set out in the letter of intent
38. The Valuer, satisfied that the prospective purchaser had the financial means to fund their proposals which would meet both planning and English Heritage's requirements and, as far as he was aware, there was no other interest in the property, discussed the exclusivity request with the Asset Services Manager. The request to enter into a single negotiation was agreed for the following reasons:
 - The ongoing liabilities and costs associated with the upkeep
 - The proposal would maintain the original use
 - The proposal would provide a capital receipt above that expected
 - Both officers were concerned that they could lose a serious prospective buyer
39. Following other site visits, a briefing paper setting out the proposed acquisition was submitted 4th July 2011. This confirmed the prospective purchaser's intention to adhere to planning recommendations and to liaise with EH and the relevant planning officers regarding the conservation aspects of the Hall.
40. An offer letter was subsequently sent direct to the Valuer, on 7 July 2011 for £241K, "in return for the freehold of the property, title number DU282704, property in, 'AS SEEN', condition".

41. In considering whether the offer received was a reasonable valuation, the following factors were taken into account by the Valuer:
- The property, a Grade II* listed building, was in a poor state of repair when it was first declared surplus to requirements and its condition continued to deteriorate.
 - The property had previously been marketed with the result that the selected developer withdrew.
 - He had read a file note from the previous Valuer, which had stated at the meeting in April 2010 that even at a pound (£) value the scheme was not viable.
 - Professional Judgement that the value of the property as a development proposition was a minus figure – with the estimated cost of refurbishment of the Hall only at £3-4m compared to an estimated developed market value of £2.1m.
 - There was no current market for alternative potential uses i.e care home, apartments or luxury hotel.
 - The only other potential use was owner occupier but it was his professional judgement that no one in the current market would be looking for a residential home of this size (30 bedrooms); comparable properties are substantially smaller and relatively good condition with significantly more land. The belief that the purchaser had the financial means to restore the Hall back to its original grandeur.
 - The annual security costs and general repairs of £100K and the need to spend an estimated £300K on repairs to maintain the survival of the building by making it watertight.
 - The additional cost and uncertainty of remarketing and the likely delay while any new developer tried to obtain whatever finance/planning was required. (estimated to be 18-24 months)
42. In summary, the Valuer considered there was no viable alternative to this offer to use the site as a residential unit, as any other type of use would have required extensive planning negotiations. The acceptance of this offer was considered by asset management and planning officers to be the best consideration reasonably obtainable and would therefore meet the Council's legal obligations under the Local Government Act 1972, S123, regarding the disposal of land. This view is supported by the Head of Legal and Democratic Services.
43. The decision to accept this offer was initially made under delegated powers by Don McLure, Corporate Director Resources on 4 August 2011. The decision was made following consideration of a short covering report and a more detailed valuation report dated 14 July 2011. Prior to the delegated decision being approved, asset management officers consulted on the proposal to accept the offer with Cllrs Avery, Potts and Foster (13 July 2011).

44. The background provided in the covering report explained that an offer of £1.8m, accepted subject to the obtaining of planned consent, had fallen through due to not being able to reach agreement over the level of Enabling Development. It was reported that the Council had withdrawn from the sale.
45. It was also reported that, “discussion had taken place with another party proposing a different approach to the enabling solution but that this would take some time to come to fruition and would require offsite enabling development. Meanwhile the building continues to deteriorate and is costing £100k p.a.” It is understood this reference refers to some discussion held with a community interest group, but which was never considered to be a viable proposition by either the Council or English Heritage.
46. No formal acceptance letter was issued by the Council. The purchaser was notified by email, by the Valuer, of the approval of the offer.
47. Once the delegation decision had been made, instructions were given to legal services to proceed with the sale. A copy of the delegated decision was provided with the instruction as authorisation to sell.
48. No checks were carried out by legal services at that time to ensure the proposed sale conformed with the Local Govt 1972 S123 as it was assumed that in approving the acceptance of the offer, through the recorded delegated decision process, the legality of the decision had already been established.
49. Whilst it was reported that negotiations regarding the original offer had fallen through, legal services had not been advised that the contract with the development company dated 3 July 2007 should be terminated. As a result, the unilateral notice placed on the property at the Land Register, to protect the company’s interest under the contract, was still in place. Consequently, the Council was not in a position to sell the property to anyone else.
50. On querying the position with the Valuer, the Chief Conveyancer was advised the previous offer was “dead in the water” and consequently applied to the Land registry on the Council’s behalf to cancel the unilateral notice on the 18 August 2011. On receipt, the Land Registry advised the company of the Council’s application.
51. The company solicitors subsequently wrote to the Council confirming that their clients had not withdrawn from the sale. They advised that the company had been unable to comply with their obligations under the 2007 contract and submit a formal planning application due to the lack of response from both the Council and its marketing agents, following consultation with planning officers and EH. Having spent significant time and money in the preparation of pre-planning presentations, the company was clearly frustrated by the Council’s actions. A supplementary contract extending time periods to progress a planning application was requested.
52. As the Council had attempted to assist the company in its planning application for a number of years and no further communications or

proposals had been forthcoming from the company since the meeting on the 27th April 2010, the request for a supplementary contract was refused and notice given that the Contract for Sale dated the 3 July 2007 was terminated. Bank details were requested to enable the return of the £75K deposit.

53. The company refused to accept termination of the contract, refused to withdraw their unilateral notice from the land registry or to accept return of their deposit. They claimed to have evidence from their own records that this matter was frustrated by the County Council. However, they were prepared to accept termination if a compensation agreement could be reached for 'wasted' costs.
54. As the 2007 contract included a long stop date of 12 months from the date of the contract, the Property, Planning and Investment Manager, Legal Services, advised that the Council was legally able to terminate the contract from that day onwards with one month's notice.
55. The Land Registry was instructed to refer the application to cancel the company's unilateral notice on the property to the HM Land Registry's Adjudicator and started to prepare a case to defend the Council's position in court.
56. It is understood the new purchaser was not happy with the delay in completing the sale, having previously advised the Council that they wished to complete within 30 days of submitting their offer. Concerns were raised that if the sale did not proceed quickly they could lose the sale.
57. Consequently, even though the Council was in dispute with the company and the interest of the new purchaser could not yet be lodged with the Land Registry, a further delegation decision was taken by the Head of Planning and Assets on the 28 November 2011 to proceed with the exchange of contracts and complete the sale, with a clause being included in the contract to pay monies due within 30 days of the removal of the unilateral notice.
58. To protect the Council interests until funds were paid a 'First Charge' was registered with the Land Registry. This allowed the purchaser access to the property and to be registered as occupiers, even though the title would not revert to them until they paid the purchase price and fees.
59. At the company's request, officers met with company representatives to discuss the position further and to make a formal complaint seeking compensation for the injustice they claim to have suffered. They quoted a figure of £40K for abortive costs and a similar figure for the time they have spent on the project.

60. Having reviewed the asset management file, the Property, Planning and Projects Manager, Legal Services, had concerns about the lack of records of what happened between April 2010 and the offer received in July 2011. The Company advised that had they been told that an alternative offer was being considered they would have made a substantial unconditional offer. In the light of the apparent lack of progress over the previous 4 years, no evidence could be produced to confirm the Company's assertion that their proposal was not, "dead in the water".
61. In an attempt to clarify the position, the Property, Planning and Projects Manager, Legal Services, contacted 2 former employees who had been involved in the disposal prior to them leaving the Council in March and April 2011. This confirmed that the sticking point on the Company's proposal was the question of the enabling development and that the company had been led to believe that some new development could be agreed at some undefined location on the site. He had hoped that the meeting with the planners (assumed to be the meeting 29 June 2010) might identify some way forward.
62. A response to the Company's complaint, drafted by legal services, was issued to the Company 19 January 2012 by the Head of Planning and Assets. The response acknowledged, with regret, the lack of communication of the Council's intentions, but rejected the claim for compensation for the time and effort invested in the original proposal on the basis that, "those efforts reflected a commercial risk by the developer who was unable to persuade EH to support an enabling development application which would have been an essential characteristic of your proposal".
63. Both parties were advised by the Land Registry Adjudicator by way of a letter dated 5 January 2012 that if cases were not submitted by 19 January 2012 , a decision would be made without a hearing and the instruction would be given to cancel the unilateral notice.
64. On the 20th January 2012, the Council was advised by the Land Registry Adjudicator that the Company had requested an extension of 21 days as they had been unable to fully prepare their case as they had not had a response to their complaint discussed at the meeting on the 9th December 2011. They had been advised that they would receive a response by the 14th January 2012 but this had not been forthcoming.
65. After asking the Council to comment on the request, the adjudicator decided to refuse the request and confirmed support for DCC's position that the restricted interest of the Company on the property should be cancelled. The reason cited for this decision was that the company had had sufficient opportunity to plead a case and gave no good reason for failing to do so.
66. It would appear that in view of the Adjudicator's decision, the company decided not to pursue any claim for compensation and bank details were provided to enable their deposit to be refunded.

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67. The restriction on the property was confirmed as being removed on the 23 February 2012. However, payment was not received until 10 August 2012.
68. The contract for the sale at £241K as signed 29 November 2011. As part of the contract the Council agreed at its own expense to:
- Ensure that the heating system within the property is in working order as soon as possible following completion.
 - To fill the central heating oil tanks situated on the property.
 - To continue with the existing 24 hour security until 31 December 2011.
69. It was explained that the offer of £241k in July 2011 although submitted, 'as seen', was based on the assumption that the heating system was in good order, as the purchaser had been advised by the Valuer this was the case prior to the offer being submitted.
70. A site visit with the purchaser on the 19 October 2011 identified the heating was not on. It was later disclosed that the system had been drained down earlier in the year following a burst pipe during the previous winter and some work was needed to get the system working properly. Having consulted technical services, the estimated cost of repair at this stage was considered to be in the region of £2-3K.
71. Following further negotiations with the purchaser, it was agreed to include the above conditions in the contract. This decision was authorised by the Assets Services Manager as these costs would have been incurred by the Council regardless of the sale and there was a risk the buyer would withdraw. Post completion, it became apparent that the extent of repairs required was much greater than first envisaged. Revised estimates from technical services at this stage were £30K- £40K.
72. Following further negotiations with the purchaser a sum of £25K was agreed in lieu of the Council's contractual obligations to ensure the heating system was in order. This was paid direct to the purchaser via a CHAPS payment 3 Feb 2012. This reduced the capital receipt achieved from disposal to £216K. In addition £6,922 revenue expenditure was incurred for the cost for excavating the external heating ductwork prior to completion. The cost of filling the oil tanks was £4453. In total, cost incurred in relation to the heating system was £36,375. One month's notice was required on the security contract so the agreement to fund security costs up to the 31/12/12 was not an additional cost for the Council.
73. No conditions of sale were applied to the contract in relation to planning development/permissions or any overage provision should there be any uplift in land price as a result of any future development. However, it is understood that as the property was to be used as a private dwelling and the sale price was not considered to be undervalue, a clause to protect the council's interest in the event of subsequent sale was not required.

74. Furthermore, as the hall is a Grade II* Listed Building, guarantees that the renovation work would progress as planned were not appropriate as the obligations placed on any owner of a Grade II* Listed Building are laid out in planning legislation.

CONCLUSIONS

75. When the property was declared surplus to requirements in 2006, the ultimate use and therefore the potential market value would appear to have been unknown. Consequently, the estimated capital receipt could not be included in any capital funding forecasts.
76. The property was known to be in a poor state of repair in 2006 and would appear to have deteriorated since that date.
77. The marketing of the property in 2006 by informal tender is in accordance with the Council's current Disposal and Acquisition Strategy (2010/11) and aimed to obtain the best consideration by the most appropriate method. However, given the historic heritage of the property, planning restrictions were inevitable and it may have been more appropriate to market the property after consultation with EH and the development of a detailed planning brief. This would have reduced bidders costs that may have been reflected in bids submitted. It would have also speeded up the subsequent negotiation process potentially allowing an earlier completion and reduction in Council maintenance/security costs. The absence of a detailed brief may account for the wide range of bids received making the evaluation process more difficult. It is noted that the current disposal strategy requires,
- “consideration should be given to obtaining planning consent or investment in the property prior to disposal to enhance its value and make it more attractive to the market”.*
78. The decision to accept the revised conditional offer of £2.3m from the building company in 2006, received after the closing date, was not supported by a documented delegated decision.
79. The two valuations referred to in Cllr Shuttleworth letter of £1.8m and £1.5m refer to the yearend valuation for capital accounting purposes as at March 2007 and 2008. The reduction in valuation was due to planning restrictions and a deterioration of the condition of the property and not due to market conditions as quoted by Cllr Shuttleworth.
80. There is lack of transparency and accountability for what actions were taken from June 2010 when it was agreed that the property should be remarketed, with a detailed planning brief reflecting EH requirements, until the actual buyer expressed an interest in the property in May 2011. In particular the files notes were insufficient following the departure of the 2 former employees involved with the disposal. It is not clear what further communication/discussions took place with the building company to evidence

that their proposals were “dead in the water” when responsibility for the disposal of the property was passed to the current Valuer

81. Whilst there is no evidence to demonstrate that any consideration was given to not selling when there was a down turn in the property market and seeking a temporary use of the property until such times as the market improved, as required by the Council’s disposal and acquisition strategy, it is understood that this would not have been feasible due to the poor conditions of the property and the increasing liability to maintain a Grade II* listed building in the interim.
82. The response from former employees in relation to enquires made into the complaint from building company in December 2011, confirm that negotiations with the company were expected to continue once the planning brief reflecting EH’s requirements agreed at the meeting in June 2010 was developed. This appears to contradict the apparent message that the “deal was dead in the water”.
83. The 4 years of negotiations, the continuing decline in the property market, the restrictions placed on the site and what would appear to be very little activity during this period on both sides suggest that the contract should have ended much sooner in the process.
84. No instruction was given by Asset Management to Legal Services to give notice to the building company that their conditional contract should be terminated and to make arrangements to refund their deposit on the basis that negotiations had ceased.
85. Discussions held with the eventual buyer regarding their interest and subsequent offer were very informal and all dealt with by the Valuer. There was no division of duties between valuation and sale activities. In agreeing to an exclusivity agreement, allowing payment to be made after the property was occupied and agreeing to fund various repairs/expenses, officers in both asset management and legal appear to have firmly believed that the Council would not get a better offer and that care should be taken not to put this buyer off.
86. Whilst there is provision in the Council’s disposal and acquisition strategy to negotiate a disposal to a single party in certain circumstances, rather than offer on the open market, and such decisions will be a matter of professional judgement, there is a lack of clarity on the procedures that should be followed when such an approach is recommended.
87. The Council’s Valuer firmly believes that at the time of sale, the property and the site was not worth anything as no new build to allow an enabling development was considered feasible and the cost of renovation of the existing Hall would exceed the estimated renovated market value. Consequently he considered that there was no interest in the property in the current market. Hence the unconditional offer of £241K from someone he

believed to be of significant financial standing who would meet all planning and EH requirements was considered, 'too good to miss'.

88. This professional judgement was informed by best information available rather than robust estimates. Some assurance that renovation costs and resale market value were reasonable has been taken from figures quoted by the buyer and from previous negotiations with the building company. It is acknowledged that this would have been subject to some review and consideration of reasonableness, as well as visible inspection, and therefore not just taken at face value.
89. As the property was not remarketed as agreed in June 2010, with a detailed planning brief to clarify any planning restrictions, it cannot be independently evidenced that the decision to accept the offer of £241K represented best consideration. Likewise nor can it be evidenced that the property was disposed of at undervalue. It is, however, acknowledged that it is the view of the Council's professionally qualified Valuer and the Head of Legal and Democratic Services that the Council has fulfilled its legal obligations.
90. To improve transparency and accountability, it may have been prudent for the Council to have sought an independent valuation to verify that the offer represented best consideration before it was accepted.
91. The real value of any property is what someone is prepared to pay for it. It is not possible to say if the Council would have gained a higher capital receipt had the property been remarketed, but the process would have been seen to be more transparent and would have strengthened the Council's overall decision making process and reduced the risk of reputation damage through challenge.
92. Ombudsman guidance, as set out in the council's disposal strategy , requires two officers to conduct negotiations. Whilst this does not appear to have been adhered to, the strategy acknowledges that this guidance may be unrealistic for every case.
93. The £241K 'as seen' offer was submitted by the buyer having been advised that the central heating system was in working order. Prior to completion it was disclosed that this was not the case. Following negotiations with the purchaser it was agreed, as part of the contract of sale, that the Council would fund essential expenses to rectify the position. Post completion, further negotiations were held to agree the amount to be funded by the Council to fulfil its legal obligations under the contract. In total expenses of approximately £36K were met by the Council.
94. The decision to agree to the inclusion of this clause in the contract was made to formalise the position agreed at inspection and to also acknowledge the risk that the purchaser could withdraw, and if this happened, the Council would still need to incur the expenses agreed to protect the building fabric. This was not a documented decision under delegated authority. Actual costs

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incurred to fulfil the Council's legal obligations under this clause were higher than had been estimated at the time the decision was made.

95. Systems and procedures for carrying out due diligence in relation to the buyer were limited in that only limited credit checks were made on the ability of the buyer to fund the estimated renovation costs to meet planning and EH's requirements.
96. Failure to formally conclude negotiations with the building company resulted in unnecessary challenge and damage to the Council's reputation.

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
01	<p>Valuations for insurance purposes, reflecting rebuild cost, varied significantly from the estimated market value and valuation figures in the fixed asset register.</p> <p>The last recorded valuation in the fixed asset register was January 2009 for £900k</p>	<p>Financial loss through over insurance</p> <p>Inaccurate capital receipts forecast</p> <p>Incorrect financial statements of account</p>	M	<p>An estimated market value should be determined when properties are declared surplus.</p> <p>Strategic finance and the corporate insurance team should be notified when properties are declared surplus (and subsequently sold), to prompt a review of insurance provision and ensure the fixed asset register and capital receipt forecasts are updated accordingly</p> <p>Valuations should be continuously reviewed through the disposal process (as required by the disposal strategy) and revised valuations reflected in the fixed asset register</p>	<p>Agreed</p> <p>Assets Service already manage the Disposal Programme and update forecasts monthly and report regularly to MOWG therefore not clear as to the necessity of advising Strategic Finance when properties are declared surplus.</p> <p>Already in place for Capital Receipts forecasting as stated above Revised Valuations will be reflected in the Asset Register every year</p>	<p>Asset Services Manager – to be implemented with immediate effect</p>

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
02	No considered planning brief had been provided as part of the marketing exercise in 2006	Prolonged negotiations resulting in increased maintenance and security costs c	H	The Disposal and Acquisition Strategy should be amended to require a planning brief is prepared prior to all marketing exercises and issued to all prospective purchasers to assist tender/bid submissions	Following the restructure with assets and planning merging into a single service planning advice, in terms of broad principles of acceptable development is provided as part of all sales particulars. It should be noted however that developers will have their own product and it is important not to be too prescriptive in stifling innovation to ensure we get best consideration and do not deter potential bids . On sensitive or large sites it is accepted that a brief will be required as has happened in relation to Whinney Hill Schools, but given the resources required and potential delays that this will not occur in every case or sale..	In place

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
03	A revised bid was accepted after the closing date following the initial marketing exercise in 2006.	Collusion Challenge Reputation Damage	H	The Disposal and Acquisition Strategy should be amended to include formal tender procedures. This should include arrangements for receipt and opening of bids, consideration of late and revised tenders, tender evaluation process etc	<p>Formal tender process is already included in Disposal and Acquisition Strategy, however a review of the strategy will be undertaken to strengthen areas of concern.</p> <p>The tender process is administered through Democratic Services. A disposal of an interest in land is different to the Procurement process and are very rarely evaluated other than on price due to an obligation to get best consideration</p>	<p>Asset Services Manager</p> <p>June 2013</p>
04	No decision was made under delegated powers to accept the informal tender from the building company as the successful tender was to be reported to cabinet following completion of the sale	Collusion Challenge Reputation Damage	H	<p>As above.</p> <p>Procedures should clarify roles and responsibilities, allow for an adequate division of duties and be consistent with the scheme of delegated authority</p>	The recent restructure in assets which included a review of policies and delegations has clarified this element of the review.	In place

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
05	The Valuer was the first point of contact for a prospective purchaser expressing an interest. All subsequent communication through to the acceptance of the offer ,pre and post contract negotiations was via the Valuer	Increased risk of collusion through inadequate division of duties	H	<p>The Disposal and Acquisition Strategy should be amended to reflect an adequate division of duties between valuation and sales.</p> <p>Respective roles and responsibilities should be clearly defined and communicated.</p> <p>All valuation of bids should be carried out by at least 2 officers and documentation retained to evidence the evaluation process.</p> <p>A formal risk assessment should be carried out as part of the evaluation process.</p>	<p>Valuations need to be carried out by the officer dealing with the disposal, Process to be implemented to ensure that all valuations are to be counter signed and approved by line manager.</p> <p>See above- already in place as part of delegation process</p> <p>Council has obligation to get best consideration but assessment of bids is always undertaken. In reviewing processes a risk assessment will inform future changes.</p>	<p>Immediate implementation of process</p> <p>Disposal and Acquisition Strategy will be amended by June 2013</p> <p>Asset Services Manager</p>

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
06	Due diligence checks carried out prior to the acceptance of the accepted offer were inadequate.	Fraud/Money Laundering Misinformed decisions External challenge Reputation damage if expected benefits of sale are not delivered	H	Documented procedures should be established to ensure that adequate due diligence checks are undertaken, prior to the consideration of any offer, to confirm both I.D and the financial capacity of prospective purchasers. Financial checks should seek to provide independent assurance on the prospective buyer's ability to not only fund the purchase but all necessary investment in the property as outlined in planning briefs and submissions. The source of funding should be clarified.	It is acknowledged that the Purchasers Solicitors has ultimate responsibility in establishing the financial credibility. However a review of financial checking processes will be undertaken to establish guidelines for officers.	Asset Services Manager June 2013
07	Consultation with Members on the proposed delegated decision was carried by the proposer not the officer authorised to make the delegated decision	Lack of accountability by authorised officers Poor decisions	L	If practical, any consultation required with Members as part of the delegated decision process should be carried out by the officer actually making the delegation decision and not the office making the recommendation	Member responses are now required as part of the overall delegation thereby alerting the decision maker to any particular concerns	In place
08	Delegated decision made without legal consultation	Legal requirements not met Reputation damage	M	Authorised officers to undertake consultation with legal, where a marketing exercise has not been carried, out to seek further assurance that proposals meet the legal requirements of the Local Government Act 1972	Further discussions with legal as part of the review will ensure that processes are robust	Asset Services Manager June 2013

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
09	Failure to formally terminate negotiation with building company	Reputation damage Financial loss	H	Legal services should keep a record of all conditional contracts issued for sale and flag long stop dates becoming due for monitoring purposes. Procedures relating to planning negotiations should be clearly documented and checklists for each property should be maintained on asset/planning records/files to help ensure compliance. A clear documented audit trail of all negotiations and any monitoring undertaken should be maintained. If negotiations are expected to continue beyond the long stop date, legal should be consulted to consider whether the contract should be extended or terminated	Agreed by the Corporate Director Resources Already in place see above Agreed see above as part of review	Property, Planning and Projects Manager, Legal Services - Immediate effect

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
				Authority for making such decisions should be clearly defined and all decisions documented with reasons.	Agreed	
				If a contract is to be recommended for termination, a revised marketing strategy for the property, with timescales, should be agreed as part of the same documented delegated decision. Consideration of the option to retain the property should be clearly evidenced.	Agreed	
				Any decision to vary from the approved strategy should be made under documented delegated authority.	Agreed	
				A copy of the delegated decision to terminate a contract should be passed to legal with an instruction to cancel the interest on the property with the land registry and refund any deposit paid. Remarketing should not commence until written confirmation is received from legal that all previous interests on the property title have been cancelled.	Agreed	

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
			H	<p>More guidance is needed in the disposal strategy to outline the circumstances when it is appropriate to use each type of disposal method listed – especially disposal by private treaty.</p> <p>The strategy should require decisions relating to the disposal method to be documented and supported by a business case. The business case should confirm who was consulted. The strategy should also specify who is authorised to approve.</p> <p>If a property is to be disposed of where a previous proposed sale fell through, the decision should be made in consultation with legal to confirm that there is no existing registered interest in the property.</p> <p>Prior to the acceptance of any offer being considered where an appropriate marketing exercise has not been carried out, an independent valuation should be obtained to verify best consideration is being obtained</p>	<p>Agreed</p> <p>These recommendations will be considered as part of the review</p>	<p>Asset Services Manager</p> <p>June 2013</p>

APPENDIX B - ACTION PLAN FOR IMPLEMENTATION

No.	Finding	Potential Associated Risk	Priority	Recommendation	Management Comment	Responsibility Timescale
10	The contract of sale included provision for the Council to fund certain expenses that had not been agreed as part of the delegation decision to accept the offer.	Lack of transparency and accountability	H	<p>Formal letters of offer acceptance should be issued to confirm the basis on which offers have been made and accepted</p> <p>Documented procedures should clarify in what circumstance and how such post offer acceptance negotiations should be carried out and recorded.</p> <p>Procedures should confirm which officers have the authority to make such decisions.</p> <p>All negotiations and decisions should be documented and supported by robust estimates.</p>	<p>Agreed and already in place but this can include electronic communication with copy placed on file</p> <p>Already in place via delegated approval</p> <p>Already in place</p> <p>Agreed-in place</p>	
11	The contract for sale made provision for payment to be made after contractual completion.	<p>Reputation damage</p> <p>Financial loss</p>	H	Procedures should clearly specify that all such decisions should be made in consultation with the Corporate Director , Resources	<p>Should this not be Asset Services Manager and Legal Services?</p> <p>Agreed by Corporate Director Resources</p>	Immediate effect

