

Confidential

LGSS Audit & Risk Management Service

Internal Audit Report - Complaint arising from the disposal of Estover Road Site 2015/16

Client : Cambridgeshire County Council:

Issued to: Councillor Shellens, Chair of
Audit and Accounts Committee

Mark Lloyd (Chief Executive,
Lead Officer – General Purposes
Committee)

Quentin Baker (Head of Law,
Property and Governance,
Monitoring Officer)

Michelle Rowe (Democratic
Services Manager)

July 2015

Date: Neil Hunter, Head of Internal
Lead Auditors: Audit
Robert Emery, Auditor
Final

Report Status:

September 2015

Audit and Accounts Committee Date:

1. Introduction

- 1.1. At an introductory meeting on the 7th April 2015, Councillor Michael Shellens (Chairman of Audit and Accounts Committee) raised a concern in relation to the disposal of land at Estover Road Playing Fields. This concern had been raised with Councillor Shellens by Councillor Paul Sales following a decision to dispose of the land .
- 1.2. The disposal of the land was authorised by the General Purposes Committee (GPC) at their meeting on the 27th January 2015. The land was disposed of on a lease basis for ninety-nine years, at a peppercorn rent, for the purpose of managing the land as a community sports facility.
- 1.3. A subsequent meeting was arranged on 13th April 2015, between Councillor Sales, Ellen Williams (Audit and Risk Manager) and Rob Emery (Auditor) to determine the exact nature of Councillor Sales' concerns.
- 1.4. At this meeting, Councillor Sales clarified that he had three main concerns in relation to the disposal of the land:
 - a. A lack of supporting documentation to support the Committee's decision to authorise the disposal of the land;
 - b. The forfeit of a significant capital receipt in a time of austerity;
 - c. The possible precedent that this disposal may set in relation to the potential disposal of other Authority owned land.

2. Audit Approach

- 2.1 The audit approach taken during this review was to :-
 - a. Examine the County Council's constitution; other relevant legislation and LGSS policies to confirm that GPC had delegated authority to approve the decision and the decision taken complied with LGSS policy and legislative requirements.
 - b. Interview key officers to confirm their knowledge and involvement in the disposal.
 - c. Review information submitted to the GPC in respect of the disposal to gain an understanding of the issues raised and to confirm what information/documentation had been made available to the Members in support of the disposal.
 - d. Review the minutes of GPC meetings to assess whether adequate discussions had taken place and that the Committee had reached an informed decision in authorising the disposal of the land under the lease arrangements.
 - e. Review the minutes and reports associated with similar Key Decisions made by the GPC since its inception in May 2014 to compare the level of information provided with that available for the decision in question.

3. Conclusion

-
- 3.1. The audit has confirmed that the General Purposes Committee had sufficient information on which to base their decision and that the correct procedures were followed throughout the process.

4. Background to the review

4.1. A report detailing the proposal to declare part of the Council's Estate, Estover Playing Fields, as being surplus to requirements and to authorise its disposal was originally considered by the GPC on the 2nd December 2014 as an opportunity had arisen to develop the land and therefore it needed to be formally declared surplus by the Committee.

4.2. The report proposed to make the land surplus and explore the opportunities to sell the land to a developer with a view to seeking planning permission to allow the construction of up to 249 houses on the site. Furthermore, to use part of the proceeds, on sale of the land, to fund infrastructure and sports facilities as well as generating a capital receipt for the Council. The Council would then grant a long lease on the balance of the land at a peppercorn rent for the provision of sports facilities at the site.

4.3. The minutes of the meeting record that:

"Members highlighted the need for more information to be provided particularly in relation to concerns raised by March Town Council, the Estover Playing Fields Association and petitioners. It was acknowledged that there was a need to understand the planning policy implications and the commercial value of the facility."

The decision was therefore made to:

"defer the report until the meeting of General Purposes Committee on 27 January 2015 to allow for discussions taking place with March Town Council and to obtain more information."

4.4. An updated report was circulated to Members of the GPC prior to their January meeting. This report included information related to the Fenland Local Plan and details of local opposition to the development from the Town Council. It should be noted that the substantive proposal, to part develop and part lease the site, was unchanged from the original report.

4.5. During the Committee meeting a substantive amendment was proposed which changed the Key Decision being made from a decision to declare the land surplus to requirements to a decision to dispose of the land on a 99 year lease at a peppercorn rent.

4.6. This amendment was passed along with the amended proposal by majority vote at the January GPC meeting.

5. General Purposes Committee Delegated Powers - Review of the County Council's Constitution and Supporting Documentation

- 5.1. The County Council's Constitution was obtained and was examined to confirm the nature of the delegated powers of the GPC in relation to authorisation of the disposal of land.
- 5.2. The Council's constitution delegates certain responsibilities and powers to the GPC, including that which is relevant to this disposal¹:

“Authority for the oversight and operation of all property-related functions including acquisitions and disposals”

The above confirms that the GPC was within its delegated authority when authorising the disposal of Estover Playing Field.

- 5.3. The minutes of the meeting confirm that detailed discussion took place indicating that Members understood the options available prior to making the decision.
- 5.4. There is nothing in the Constitution or the Scheme of Financial Management that specifies the minimum level of information that must be provided to Members prior to them making a decision.

6. Circular June 2003: Local Government Act 1972 general disposal consent (England)

- 6.1. This document² grants the Council the power to dispose of an asset below fair value without requiring specific consent from the Secretary of State so long as:

“a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

i) the promotion or improvement of economic well-being;

ii) the promotion or improvement of social well-being;

iii) the promotion or improvement of environmental well-being; and

b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).”

¹ Cambridgeshire County Council Constitution Part 3B-1 page 3

² Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can be reasonably obtained – Annex part 2

7. Independent Valuations

- 7.1. The Head of Strategic Assets (HoSA) informed the GPC at their January meeting that³:

"independent valuation advice had confirmed that the Council could achieve between £300k to £6m, which reflected the range from no units to the maximum of 249 and no playing field."

- 7.2. After the decision to dispose of the land was made in the January 2015 GPC meeting a new valuation of the land was obtained⁴. The valuation came back at £500k. The narrative states that planning permission for development is unlikely for at least seven years as this is the earliest review date of the Fenland Local Plan.
- 7.3. The Strategic Asset Development Manager (SADM) informed us that valuing assets after the disposal decision is made is standard practice as the decision on the disposal route often affects the fair value of the asset.
- 7.4. While the original valuation advice may have put the land above the limit at which the disposal could be authorised without the consent of the Secretary of State (£2m), the second valuation was below this, thus there was no requirement to seek specific consent.

8. Information provided to GPC

- 8.1. This original report (from the Director of Finance, considered at the meeting of the GPC on the 2nd December 2014⁵) contained an intention to *"submit a planning application for development of sufficient housing to fund infrastructure and sports facilities, and generate a receipt for the County Council."* This process would be subject to the necessary planning permission and public consultation prior to disposal of the land.
- 8.2. The minutes from the January 2015 GPC meeting include that⁵:

"The Chairman reported that a copy of his proposed motion to Council, a plan and a copy of Mr Shermer's written submission had been circulated to the Committee as background information."

Democratic Services could not provide a copy of the proposed motion when requested as this proposal was never submitted to Council due to the decision made by the GPC.

³ Minutes from the meeting of the GPC on the 27th January 2015

⁴ Communication from Andrew Cowling - Director and RICS Registered Valuer of King West Ltd. Dated 16th February 2015

⁵ Agenda item 4, GPC meeting on the 2nd December 2014

8.3. While there is provision in the Council's Constitution for decisions made by the GPC to be formally reviewed by Full Council⁶, by written request by 24 or more Members, this was not enacted in this case.

8.4. An updated report from the Director of Finance⁷ was circulated to Members of the GPC prior to their January 2015 meeting. In addition to the information in the original report it included information related to the Fenland Local Plan and local opposition to the development from the Town Council. The substantive proposal, to part develop the site and part lease, was unchanged.

9. Discussions with Key Officers

9.1. Audit met with the HoSA. In this meeting he confirmed that, while there was no official record, it was known by Members and Officers ahead of the January GPC meeting that an amendment to lease the entire area at a peppercorn rate was likely to be proposed as Cllr Count had circulated a motion to be submitted to full Council proposing the 99 year lease of the entire site.

9.2. The HoSA also confirmed that a Group Leaders meeting had been held prior to the January 2015 meeting of the GPC which Cllr Sales had attended where Estover Fields was discussed. No formal records are taken of Group Leader meetings.

9.3. Further, the HoSA explained that the values were not included in the report put to the December 2014 GPC as the amounts will depend on the results of any planning applications and public consultations and that it is not normal practice to include potential values and costs in reports when seeking approval for a declaration of surplus at Committee as these could be commercially sensitive prior to marketing the site.

9.4. In discussions with SADM and the Asset Service Manager they stated that, to the best of their knowledge, there are no requirements relating to the amount of information required by Members to inform their decisions regarding asset management.

10. Review of minutes from the GPC meetings on 2nd Dec 2014 and 27th Jan 2015

10.1. The minutes of the GPC meeting in December 2014 record that several parts of the report were queried, including the lack of figures for the projected capital receipt⁸.

10.2. As noted in 7.1, at the January GPC meeting the HoSA indicated that an independent valuation had found the land to be worth between £300k and £6m, depending on the level of residential development included in any approved planning application.

10.3. At the January 2015 GPC meeting statements were made by three invited speakers (District Cllr Mike Cornwell, Mick Jordan of the Estover Playing Fields Association and

⁶ Paragraph 4 b) Part 4.5 of Cambridgeshire County Council's Constitution

⁷ Agenda item 5, GPC meeting on the 27th January 2015

⁸ Minutes from the meeting of the GPC on the 2nd December 2014

Mike Shermer (former March Town Councillor)) all spoke in favour of longer lease times and retention of the whole site for sports facilities rather than partial development.

10.4. Following these statements a substantive amendment was proposed by Cllr Mac McGuire and Seconded by Cllr Steve Count to lease the entire area to March Town Council for 99 years at a peppercorn rate.

10.5. The minutes record that there was extensive discussion at the January 2015 GPC meeting, covering areas including public health benefits; loss of income to the County Council; and intra-County prosperity sharing.

10.6. It is understood, from the officers concerned, from discussion with Cllr Sales and from review of media outlets, that there was significant public opposition to the development of the land for housing.

10.7. The substantive amendment was passed by majority vote and the amended proposal to dispose of the land on a lease was carried by a majority vote; the following was resolved:

i) *“in respect of the County Council owned land known as Estover Fields, to grant a lease for a term of 99 years at a peppercorn rent, to an organisation duly established and constituted for the purpose of managing the land as a community sports facility.*

ii) *authorise the Director of Finance, in consultation with the Chairman of the General Purposes Committee, subject to the following conditions:*

a) *compliance with all legal requirements and processes;*

b) *following conduct of due diligence in respect of the transferee organisation, and*

c) *Fenland District Council and March Town Council having entered into binding agreements committing each to provide £100k funding to the transferee organisation for the improvement of the sporting facilities at Estover Fields.*

to enter into any agreements necessary or incidental to the implementation of these proposals.”

11. Review of similar Key Decisions made by the GPC

- 11.1. From review of the Key Decisions made by the GPC since its inception in May 2014, four decisions of broadly similar magnitude were found. The decisions reviewed were: the Heritage Lottery Fund Bid for Wisbech High Street⁹, the Littleport School Land Exchange¹⁰, the March Office Rationalisation Project¹¹ and the decision to approve a loan of £4m to the Arthur Rank Hospice¹².
- 11.2. Of these, the March Office rationalization and the loan to Arthur Rank had full business cases provided, the Lottery Fund Bid had the costs made clear and potential benefits for the community set out and the School Land Exchange had no financial data provided. The minutes of the discussion related to the School Land Exchange record that Members specifically *“expressed disappointment that the report did not contain sufficient detail particularly in relation to the value of the land”*.

⁹ Agenda item 14, GPC meeting on the 9th September 2014

¹⁰ Agenda item 6, GPC meeting on the 7th October 2014

¹¹ Agenda item 5, GPC meeting on the 7th October 2014

¹² Agenda item 5, GPC meeting on the 4th November 2014

12. Conclusions

12.1. The audit review confirmed that the decision to dispose of the land on a peppercorn lease basis to a third party was:

- a) within the GPC's delegated powers,
- b) below the £2m limit above which the consent of the Secretary of State is required,
- c) passed by majority vote as is required by the Council's Constitution and,
- d) the amended proposal was subject to detailed discussion, as recorded in the minutes, during which Members clearly indicated their understanding of the issues involved in the decision.

12.2. Although there was no formal report on the proposal that was eventually passed, this was due to a substantive amendment being passed at the meeting which altered the nature of the decision being made. It is clear from the minutes that in this case the salient points of the proposed amendment were discussed in detail and understood and that the decision was therefore made with due consideration.

12.3. The level of financial information provided in the officer reports to the December and January GPC meetings was in line with the original decision, to:

"Authorise the Director of Finance, in consultation with the Chairman of the General Purposes Committee, to establish an alternative use for the Estover Road site, and to enter into any appropriate Agreements, which may include disposal (by sale or by lease), or development by the Council."