

Briefing Note for Members in relation to the decision on the sale of the South Norfolk House Site

To assist Members in coming to a decision on the bids which have been received in relation to the South Norfolk House site, Officers have sought legal advice on what factors can be taken into consideration in making that choice. The full advice is attached in the appendix to the main report but is précised below for both Members and the public.

1.1 Local authorities are given powers under the Local Government Act 1972 to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease, or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies), unless the Secretary of State consents to the disposal (section 123, LGA 1972).

1.2 The duty to obtain the best price does not require the highest offer to be invariably accepted, regardless of who makes it and when it is made. The best consideration is based on all the commercial terms of the offers, as best consideration is not limited to the purchase price.

Other commercial elements such as conditions applied to the offer, length of time for sale proceeds to be received are some of the other aspects that can be taken into account.

1.3 However, anything other than commercial elements of the offers cannot be taken into account when calculating best consideration, including those which do not have a direct commercial or monetary value to the Council such as: -

- Job creation.
- Social value – i.e., improved visitor numbers to a particular area.
- Using the land for a particular desirable purpose

1.4 A subsequent amendment to the Local Government Act 1972: General Disposal Consent 2003 ("the Consent"), removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the land or property is sold "undervalue" and the difference is £2,000,000 or less between the unrestricted value of the interest to be disposed of and the consideration accepted.

1.5 In other words, if a decision was made to sell South Norfolk House for less than the best consideration then this would be seen as sold “undervalue” and Members could take into account other factors that do not have a direct commercial or monetary value such as the ones listed in 1.3 as they are “social, economic or environmental benefits” which may arise from the disposal.

1.6 However, a decision to sell “undervalue” would then need to comply with the UK’s Subsidy Control regulations (the replacement of the European Commission’s State aid rules).

When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development.

While the minimal financial assistance (MFA) allows public authorities to award low-value subsidies (up to £315,000) without the need to comply with the majority of the subsidy control requirements. Any subsidy over £100,000 are also subject to the transparency rules requiring them to be reported which may include information of a commercially sensitive nature to the beneficiaries of subsidies or schemes. Failure to comply with the rules means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient and also a claim from other parties who may have submitted better commercial terms. There would also be reputational damage too.

1.7 Officers have also sought legal advice as to whether the Council’s Best Value Duty could allow Members to take other factors into account such as other financial benefits in coming to a decision. However, the legal advice is that the Council’s Best Value Duty is “to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.” This means that authorities should consider overall value when reviewing service provision.

The sale of Council commercial property is not an arrangement to secure improvement of services. The appropriate power under which a decision to sale the South Norfolk House site is therefore the power of sale under s123 Local Government Act 1972

1.8 For the reasons given above the Legal advice is to only take into consideration the best commercial offer in coming to a decision.

Contact Officer:

Debbie Lorimer
Director Resources

Debbie.lorimer@southnorfolkandbroadland.gov.uk tel: 01508 533981