



ADUR & WORTHING
COUNCILS

Joint Overview and Scrutiny Committee
19 March 2020
Agenda Item 8

Key Decision No

Ward(s) Affected: All

Scrutiny Request on Disposal of Council Owned Land and Assets

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1 To respond to the request from the Joint Overview and Scrutiny Committee to explain the consultation processes undertaken for the disposal of publicly owned Council land and assets following scrutiny request relating to the disposal of land at Shoreham Beach Green, Shoreham.

2. Recommendations

- 2.1 The Joint Overview and Scrutiny Committee are recommended to note the contents of the report.

1. Overview

- 1.1. It is Government policy that local authorities should dispose of surplus and under-used land and property wherever possible. The Council has fairly wide discretion to dispose of its assets (such as land or buildings)

in any manner it wishes. When disposing of assets, the Council is subject to statutory provisions, in particular, to the overriding duty, under section 123 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal. This duty is subject to certain exceptions that are set out in the General Disposal Consent (England) 2003.

- 1.2. Under Section 123(2A), the Council must follow certain statutory requirements to advertise the disposal of land that consists of or forms part of an open space.
- 1.3. The way the Council manages its land/property assets can have a significant impact both on the quality of services delivered to the public and the local environment. Effective asset management is essential in bringing 'agility' to land and property assets so that the delivery of the Council's goals and objectives are realised in a sustainable manner, at the right time and on budget. The forthcoming Asset Management Strategy will demonstrate the Council's overall approach to managing its land/property assets.
- 1.4. The Council considers the business case for disposing of any assets that are no longer of any use to it and is unlikely to be in the future or which provides only a benefit that is disproportionate to the opportunity cost of the capital tied up in the asset.

2.0 Meaning of Disposal

- 2.1. For the purposes of this Policy, a disposal means any freehold disposal, by sale or exchange, of Council owned land/property (including buildings) and any disposal by the granting of a lease, licence or easement for a period greater than 7 years. Leases of 7 years or less or assignment of a term which has not more than 7 years to run are not covered by the statutory requirement to obtain best consideration. Disposal takes place at the time of completion and not exchange.
- 2.2 Both Council's own a large number of assets across the area. These range from scout huts and community centres, to seafront shelters but also include a large number of commercial assets such as retail units, industrial premises and agricultural land. These are let on leases to various businesses and entities on terms varying according to the particular circumstance of the case. A large number of the leases are

for a period greater than 7 years. New and renewed leases with businesses and community groups for greater than 7 years therefore fall within the definition of “disposal”

3.0 Meaning of Best Consideration

- 3.1. Best consideration’ means achieving maximum ‘value’ from the disposal, not just maximum price. Disposal at less than market value must contribute to the ‘promotion or improvement of the economic, social or environmental wellbeing of the area’. Unlike private and commercial landowners, a local authority is in the position of a trustee in relation to the land that it holds on behalf of the community and has a statutory duty to sell land at the best price reasonably obtainable. The Council will only be able to demonstrate that it achieved the best consideration by obtaining an appropriate valuation of the land.

4.0 Means to Dispose of Land and Assets

- 4.1 **Private Treaty** – a sale of land/property negotiated with one or a small number of interested parties either through a direct approach from an individual(s) or through a marketing exercise.
A private sale without marketing the land may be justified where for example:
- A. the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
 - B. the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
 - C. the purchaser has a particular interest in purchasing the land or a particular association with the land;
 - D. the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
 - E. the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

- 4.2 **Public Auction** – a sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing.
- 4.3 **Formal Tender** – a sale of land/property by a process of public advert and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. A fair and transparent tender process will need to be adopted.
- 4.4 **Exchange of Land** – a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will normally need to meet at least one of the objectives contained in Platforms for our Places and will be 'equal' in commercial worth to the land exchanged whether from the value of the land itself or where a payment is made in addition to the land exchanged.
- 4.5 **Informal Negotiated Tender** – a transaction involving a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals who submitted the most advantageous bid or bids.

5.0 Council Constitutions' Engagement Requirements

- 5.1 The Councils' constitutions at section 3.12.13 set out the delegations to the Head of Major Projects and Investment relating to the disposal of land:

To dispose of land in connection with the Council's functions and to grant leases, easements, licences and wayleaves of, in, or over buildings or land in connection with the Council's functions.

The Scheme of Officer Delegations does not specify that any specific consultation is required in exercising this delegation. However, exercise of all delegations are subject to the general principles set out in section one of the Officer Scheme of Delegations.

- 5.2 In practice, Officers work closely with senior Councillors including Executive Members for Resources and Executive Members for Regeneration when considering property matters. Large scale

disposals (such as the decisions to dispose of land at Adur Civic Centre, or Fulbeck Avenue) are key to delivering the economic and regeneration outcomes that the Councils are working towards in Platforms for our Places and informal consultation with Executive Members is part of the process.

- 5.3 Key Decisions, in accordance with the requirements of The Local Authorities (Executive Arrangements) Regulations and the Executive Procedure Rules set out in Part 4 of the Constitution, require 28 days notice of the matter to be published before a decision is made. If the decision is to be made by an Officer under their delegated authority, then a formal Officer Executive Decision Notice must be published confirming the decision, which is then subject to a five clear working day Member call-in procedure which allows further scrutiny of decisions. The decision may not be implemented prior to the call-in period expiring.

6.0 Disposal of Land At Shoreham Beach Green

- 6.1 The disposal of land at Shoreham Beach Green for a cafe and community facility arose following a marketing campaign (a formal tender) in 2016. The marketing campaign was covered in local press and was advertised by Adur District Council using its social media sites and website.
- 6.2 A panel of Officers and Councillors was convened to assess the bids received, the panel subsequently interviewed bidders and the Officer, in consultation with the panel, made a selection of a preferred bidder.
- 6.3 As Shoreham Beach Green is open space a consultation under S123(2A) was undertaken. A notice was placed in the Shoreham Herald for two consecutive weeks, a notice included on the Council's website; site notices were placed on poles surrounding the site for a period of 21 days. The nature of the consultation was designed to reflect the consultation requirements of a planning application.
- 6.4 The Agreement for Lease contract that was agreed with the preferred bidder required them to conduct a public consultation event on their proposals 28 days before submitting a planning application. The preferred bidder held an event at a local community facility and also attended the Shoreham Beach Dreams event to discuss their proposals.

- 6.5 The normal extensive public consultation was undertaken as part of the planning process which generated numerous responses and comments. Members of the public were able to speak at the planning committee meeting which considered the proposal.

8.0 Financial Implications

- 8.1 There are no direct financial implications arising from this report. However information about the financial governance concerning disposals is provided below.
- 8.2 The financial regulations provide guidance on the disposal of land and buildings. These guidelines must be adhered to by all officers. An extract from section 4.4.2 of the financial regulations is provided below:

Where disposal of land and buildings is allowed, it shall be conducted in accordance with the scheme of delegations and the provisions detailed in (a) (i) – (vi) below.

- (a) Approved methods of disposal shall be by:-
 - (i) Private Treaty;
 - (ii) Auction;
 - (iii) Tender
 - (iv) Sealed Offer;
 - (v) Exchanges of land; or
 - (vi) Compulsory Purchase Order
 - (b) To ensure that where land is to be disposed of by the Council, the Chief Financial Officer shall ensure compliance with Financial Regulations and S123 of the Local Government Act 1972.
 - (c) Prior to any disposal of land, a valuation of the asset to be sold should be obtained from an appropriately qualified valuer.
- 8.3 In addition to the above, any disposal of an asset worth more than £50,000 must be approved by the Executive Member of Resources via a formal report.

9.0 Legal Implications

9.1 Section 123 Local Government Act 1972 provides the Council with the power to dispose of land with the caveat that the Council must not do so for a consideration less than the best that can be reasonably obtained.

9.2 Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 provides criteria and guidance for circumstances when a local authority considers it appropriate to dispose of land at an undervalue.

9.3 Section 2(A) Local Government Act 1972 provides that when disposing of land consisting of open space a local authority must first advertise their intention for 2 consecutive weeks in a local newspaper and consider any objections to the proposed disposal which may be made to them.

9.4 Section 8 Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 sets out the meaning of a “key decision” which is further defined in Article 12 of the Council’s constitution.

9.5 The Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 governs the decision making processes relating to Executive decisions and these are encompassed in the Council’s Executive Procedure Rules within the Constitution.

9.6 Paragraph 3.12.3 of the Officer Scheme of Delegations provides authority to the Head of Major Projects and Investment to dispose of land in connection with the Council’s functions and to grant leases, easements, licences and wayleaves of, in, or over buildings or land in connection with the Council’s functions. Paragraph 1.3.1 provides that all delegations shall be exercised in accordance with the Constitution and paragraph 1.3.2 provides that any officer exercising a delegation shall only do so in accordance with the Financial Procedure Rules.

Legal Officer: Susan Sale

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Background Papers

- None

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Sustainability & Risk Assessment

Sustainability & Risk Assessment

1. Economic

- The contents of this report have no direct economic impacts.

2. Social

2.1 Social Value

- Matter Considered, no issues identified

2.2 Equality Issues

- Matter Considered, no issues identified

2.3 Community Safety Issues (Section 17)

- Matter Considered, no issues identified

2.4 Human Rights Issues

- Matter Considered, no issues identified

3. Environmental

- Matter Considered, no issues identified

4. Governance

- There are no detailed governance issues arising from the report or its recommendations.