

At a meeting of the AUDIT AND GOVERNANCE COMMITTEE held in the CIVIC CENTRE on THURSDAY 31 JULY 2008 at 3.00pm

Present:-

Mr G N Cook in the Chair

Councillors Arnott, M. Forbes and Wares.

Declarations of Interest

Councillor Wares requested clarification of his position indicating that he did not socialise with the Leader.

Councillor Arnott took issue with Councillor Wares stating that Councillor Wares had previously requested a dispensation from the Standards Committee in respect of the Flodden Road site. The City Solicitor reminded Members of the Standards Board's guidance:

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

As Councillor Wares' ability to make a judgment in the public interest had been brought into question, he made an open declaration in respect of Item 4 – Proposed Sale of Freehold Reversionary Interest in Ford and Hylton Club and withdrew from the meeting and took no part in the consideration of the report.

Apologies for Absence

Apologies for absence were received from Councillor Allan, Councillor Wright and Mr. Paterson.

Minutes

1. RESOLVED that the minutes of the meeting of the Committee held on 30 June 2008 be confirmed and signed as a correct record.

Proposed Sale of Freehold Reversionary Interest in Ford and Hylton Club, Poole Road, Pennywell

The Chief Executive (Acting) submitted a report informing the Committee of the proposed disposal of the Council's freehold reversionary interest in land on which the Ford and Hylton Club is situated and of the due diligence undertaken with regard to the proposed disposal.

(For copy report – see original minutes).

Lynne Snowball, District Auditor was in attendance at the meeting and outlined the outcomes of her review into the proposed sale of the land which is leased to Ford and Hylton Club. She referred to Appendix 5 of the report which detailed her letter to the Council in full.

The District Auditor outlined her responsibilities which mainly relate to:-

- the legality of the Council's financial transactions;
- financial stewardship and accountability;
- governance, decision making and internal control; and
- securing and improving value for money.

The scope of the District Auditor's review was to look at the arrangements with regard to the sale of the Council's freehold interest and also the rent review. The District Auditor highlighted matters which had been raised regarding the company which had previously made an approach to purchase the land, declarations of interest by Councillors considering the proposed transaction and the potential benefits to the leaseholders. The District Auditor stated that she considered that all of these issues were outside her remit.

Lynne Snowball advised that she had reviewed the process the Council had gone through and the decisions made with reference to the statutory requirements that the Council should obtain best consideration for the sale of land and for long leases.

The background to the proposed transaction was outlined by the District Auditor. The Council had granted a 99 year lease of land to Ford and Hylton Lane Social Club and Institute Limited in 1967. The lease was transferred in 1991 to the present leaseholders and one other individual and in 1997 to the present leaseholders. At this time one of the leaseholders had just been elected as a Member of the Council and both leaseholders are currently Members. There was an approved change of use to a private members' club in 1987 and a rent review in 1999.

The Council and the leaseholders were both approached by Gladedale Limited in 2007 to purchase their respective interests and acquire the land for housing development.

With respect to the sale of the land, the District Auditor reported that the Council had obtained a valuation from independent valuers Knight Frank and also from the District Valuer and the offer received has been in line with the valuations.

In 1999, as a result of a review, the rent was increased from £375 to £750 per annum and this figure was to remain static until the next rent review in 2032. Knight Frank had stated that the valuation was below market value where they would have expected a rental value to be approximately £6,000 per annum in 2008, and in the region of £2,250 to £3,000 in 1999.

The District Auditor had found that the records relating to the rent review were poor, but it was understood that the rent was set based on accounts provided and the acceptance of comments from the leaseholder on affordability. There was an option to refer a dispute to an independent surveyor as part of the review but this was not taken up.

The District Auditor had found that the rent reviews were not specifically covered by the Council's scheme of delegation at the time and were therefore not properly authorised. It was also highlighted in the valuation from Knight Frank that the leaseholders had not complied with the terms of the lease in relation to repair and maintenance, and the Council had failed to monitor the conditions of the lease.

The overall conclusions made by the District Auditor were that the Council had taken appropriate independent advice and the proposed consideration for the sale of its freehold interest in Ford and Hylton Club land was consistent with independent valuations. However:-

- the Council's position may have been adversely affected by past events; and
- the options for the Council surrounding this decision have not been properly explained to Members.

She also highlighted that nine years after the rent review, it was not possible to go back and unpick past failings. However, some recommendations had been made, and some further work by the District Auditor was underway, to assess whether this was a general failing, and no further action was proposed at this time.

The District Auditor drew attention to the report of the Chief Executive (Acting) and explained that she felt there could be confusion between her comments and those of the Council and asked that the Committee refer to her letter rather than her comments as presented in the report.

The Chairman thanked Lynne Snowball for her presentation and welcomed her comments on the report.

Councillor Arnott stated that the Committee had been provided with full copies of all documentation but only had an extract from the Knight Frank report and not the full report, and also had no detail of the instructions given to Knight Frank or the District Valuer. Councillor Arnott felt that the Committee was entitled to see all of this information but indicated he was happy to continue with the meeting on the basis of verbal information but if he was dissatisfied he would request an adjournment.

Councillor Arnott summarised his understanding of the situation as that the rent review in 1999 had led to a situation where tenants had been paying significantly under the market rent in the view of Knight Frank. He understood that the Council

had a different view of this, but he believed that the error in formulae had resulted in a reduced value for the City of Sunderland Council's freehold interest. Councillor Arnott suggested that during the time that the tenants have had the advantage of paying a low rental amount, the premises have fallen into disrepair which is a breach of the conditions of the lease. Councillor Arnott was of the view that the situation was wholly unacceptable, given the status of the tenants involved.

However, the District Auditor reiterated what was set out in her letter, that in terms of the rent, ultimately no-one could go back and second guess what the position was at that time. It could only be speculated upon that the rental was set below the appropriate value at the time but there were no records to back this up. The Council may have failed to secure value for money in terms of the rental income but this could not be evidenced.

Ultimately the rent review was legally agreed and there was no indication that the condition of the premises and monitoring of the lease conditions would have had an impact on the sale itself. Colin Clark, Head of Land and Property, confirmed that there was no impact on the value of the Council's interest as a result of non-compliance with conditions of the lease. The conditions which were attached to the lease in 1966 were intended to secure a reasonable state of repair for the benefit of the area, not for the value to the Council.

Jason Wall of valuers Knight Frank advised that they had carried out a valuation in 2007 and then worked this back to 1999. The land was assessed on a rate per m² basis which is how it is judged now, but historically profitability had been used as a method of setting rents. Mr. Wall stated that he had looked at evidence that around the time of the rent review, clubs were not profit making and were there as a social resource. The figure given was within the scope of what the rental value might have been at the time.

The Chairman stated that the fundamental issue was the lack of records relating to the rent review and that as the lease was signed, it could not be retracted. He enquired how the Council might respond to the situation.

Lynn Hunt of District Audit stated that as they did not know if the Ford and Hylton Social Club was an isolated case, they had extended a sample to a dozen leases and had pulled together initial findings. It was also planned to do some work on the strategic approach to asset management across the Council. District Audit was encouraged by the statements made by the Council in the action plan.

The Chairman requested that the end result of this work be presented to the Committee in due course.

Councillor Arnott expressed concern that the Council had missed out on rental income but was more worried that this rental value was being used in the formula for the land sale. The Chairman cautioned against concluding that the Council had lost income because there could have been good reasons for the value being set at that level but there was no evidence either way. He also highlighted that the figures which had emerged for the capital consideration seemed roughly correct and the

evidence did not prove that the extrapolation of the rent had led to an incorrect land value.

Lynne Snowball added that the valuation is what the Council could secure in terms of proceeds and the Authority had attempted to negotiate an improved offer from Gladedale.

The Chairman asked if there would be a point when the offer from Gladedale would expire and the Head of Land and Property advised that this would be up to the parties involved to determine if the offer would continue to stand.

The City Solicitor clarified that the land transaction was being held in abeyance due to the review which the District Auditor had carried out. The formal position was that of 12 September 2007, when the Cabinet approved the sale of the land for £100,000 or what represented best consideration. The recommendations of the Audit and Governance Committee would be reported to Cabinet to consider.

Councillor Arnott voiced his concerns that the leaseholders may be blocking an increased offer from Gladedale for the Council's freehold interest. He also felt that Officers dealing with the matter were operating in a difficult situation and the Council should never have allowed itself to get into these circumstances.

The Chairman emphasised that any incidents of Officers being subjected to undue pressure would be Code of Conduct matters and should be reported and evidenced.

He drew Members' attention to the recommendations set down in paragraph 9 of the Chief Executive (Acting)'s report as a professional way forward which would enable any further learning points to be considered by the Policy and Co-ordination Review Committee, with the results of this also being reported to Audit and Governance Committee.

Councillor Arnott stated that he wanted a resolution which did not just focus on aspects of the valuation as he felt there were many unsatisfactory aspects and it would not be in the public interest for the Cabinet to allow the transaction to go forward even if it was at best consideration. Councillor Arnott went on to say that he did not think that the process should ever have started and there were matters of concern relating to the previous possible sale to Maxam Property Ltd and the timing of reports to Cabinet.

The City Solicitor highlighted that Officers of the Council had at the outset identified the sensitive issues and had addressed these by seeking independent valuations and pro-active advice had been given on the Code of Conduct, which was in force on the day the reports had been considered by Cabinet. A full and comprehensive report had been submitted to the Audit and Governance Committee. The Council had received evidence that £100,000 could be accepted as best consideration but the investigation had uncovered poor record keeping in 1999.

The Chairman asked if the Committee was satisfied that Officers had done all they could to manage this appropriately and Councillor Forbes replied that she was not 100% satisfied with the report of the Chief Executive (Acting). The Chairman

reiterated that the former Chief Executive, Chief Executive (Acting), City Solicitor and City Treasurer had taken a number of steps to ensure that this matter was dealt with appropriately.

Councillor Arnott stated that although he had been tracking this matter since last September it was only on receipt of the papers for this committee meeting that he had been made aware by Council Officers that the original approach to purchase the Councils Freehold Interest had come from the leaseholders.

Councillor Arnott stated that he was still concerned about only having extracts of the report from Knight Frank. He queried whether Knight Frank had changed their opinion on the value of the land as initially they had said that nearby residential development might lead to an increase in the land value, but then said that the existing valuation took this into account.

Jason Wall responded that if the entire area was to be redeveloped then the hope would be that the whole area would improve. The view was that if a small area not adjacent to the site was redeveloped it did not affect the value. Mr. Wall advised that appraisals for market value were based on units, building prices etc and then worked back. It was more likely that if a first piece of land was developed then the second piece would be more attractive. Knight Frank's instructions were to provide an appraisal of market value which has a strict definition and does not reflect any special interest. It is a figure based on what someone would be prepared to pay in an open market situation.

Council Arnott observed that Knight Frank's valuation was on the basis that planning consent had not been granted whereas in practice such land sales as this are not normally finalised until detailed planning permission has been given by the City Council.

Councillor Arnott also observed that the risks which would have applied to the leaseholders if they had purchased the freehold had now transferred to the developer Gladedale.

The Chairman asked if Councillor Arnott required a third independent report on the valuation of the land but he said that this was not necessary at the present time. With

Councillor Arnott queried what the ransom situation was and it was explained that this was about access to the land. Councillor Arnott suggested that the Council was in a ransom situation as it owned the freehold of the land and could hold out for a higher price.

Bringing the discussion to a conclusion, the Chairman asked for the views of the Committee. Members supported the proposal that the learning points and proposed actions set out in the reports should be agreed and the review carried out by District Audit referred to the Policy and Co-ordination Review Committee.

Councillor Arnott proposed that a protocol should be drawn up relating to business dealings between the Council and elected Members. The City Solicitor would be asked to look into this matter and report back to the Committee.

Regarding the proposed sale of the land at Ford and Hylton Club, Councillor Arnott moved that given the many unsatisfactory aspects and circumstances surrounding the whole affair, he believed that it was against the public interest for the disposal of the Council's interest in the Ford and Hylton Social Club to be allowed to go ahead even if the present deal involves best consideration for the Council's freehold interest. The Chairman dissented from this proposal but agreed that it should go forward to Cabinet.

Councillor Forbes requested that the Cabinet consider alternative uses for the land. Councillor Forbes stated that she could see no reason for an urgent disposal of the land. Further that the NRAs had been lodged with the Council in March and were in process of phased validation. They included planned development by Gentoo in the wider area that could in future increase the value of the land in question or could indicate retention of the land for alternative uses, which may better serve the needs of the local community. The City Solicitor reminded her that one of the learning outcomes was for future reports to include alternative options.

The District Auditor also informed the committee that a taxi business was operating from the club premises in contravention of the terms of the lease which only allowed the building to be used as a club.

Upon discussion, it was:-

2. RESOLVED, with the Chairman dissenting from item (i), as follows:-
 - (i) that the Cabinet be recommended to reconsider the disposal of the Council's interest in the Ford and Hylton Club as given the many unsatisfactory aspects and circumstances surrounding the affair the committee considers that it is against the public interest for the present transaction to proceed even if it involves best consideration for the Council's freehold interest;
 - (ii) that the committee requests that the Cabinet consider alternative uses for the land which may better serve the needs of the local community;
 - (iii) that the learning points and proposed actions be agreed and the District Auditor's further review be referred to the Policy and Co-ordination Review Committee and the Audit and Governance Committee for consideration; and
 - (iv) that the City Solicitor be requested to prepare a protocol on business dealings between the Council and elected Members.

(Signed) G N COOK
Chairman