

Sale of NWC site

Kamal Adatia <Kamal.Adatia@leicester.gov.uk>

Mon 2018-03-05 11:31

To: [REDACTED]

Cc: Matthew Wallace <Matthew.Wallace@leicester.gov.uk>

Dear Councillor [REDACTED]

Thank you for your email concerning the sale of the New Walk Centre site. What follows is a joint effort, dealing with both the process elements and the legal elements of your original query.

Matthew Wallace offered to and arranged a meeting with you and Cllr Kitterick to discuss the New Walk Centre development in December last year, following a discussion at Scrutiny. I understand that you were unable to make that meeting. He is happy to extend that offer a meeting once again to outline to you information on the New Walk Centre development to give you a general update and respond to your queries at a convenient time.

In relation to the specific points you raised in your email:

Release of the Valuations in a public manner:

The Royal Institution of Chartered Surveyors (RICS) have established two principle methodologies for the valuation of development land, firstly a comparison with the sale price of land for comparable development; or secondly an assessment of the value of the scheme as completed and deduction of the costs of development (including developer's profit) to arrive at the underlying land value. This is known as the residual method. The New Walk Centre scheme and site had no comparable developments (indeed whilst the development parameters were outlined in the invitation to tender documentation for the procurement exercise, it wouldn't be finalised until the actual bidders submitted their respective schemes) and therefore the residual valuation method was used.

A comprehensive team of independent external advisors supported this methodology. Ernst & Young undertaking extensive financial modelling around the viability of delivering the required outcomes for the site (commercial office, private residential and complimentary retail/leisure). Agents and valuers, Lambert Smith Hampton, undertook soft market testing and occupier demand studies to confirm the approach would be attractive to occupiers. Anthony Collins undertook the legal compliance elements and EC Harris the technical aspects. As the residual valuations are part of the procurement process we are not in a position to release information publically. Release would prejudice the commercial interests of the authority by resulting in the publication of the details of the transaction it is proposing to conclude in the coming months and which both parties are contractually bound to conclude. Any delay as a result will impact upon its ability to conclude the transaction and that would lead to there being liabilities for the Council as a consequence. As such, at present, the documents are withheld from public release under in FOIA S43.2 on the basis that the disclosure of this information would, or would be likely to, prejudice the commercial interests of any person (including the authority) holding it

Disposal of the Site for Best Consideration / ministerial consent:

The disposal of New Walk Centre is part of a transaction that the Council took out to procurement to secure a developer for the New Walk Centre site for the purposes of regeneration. Rather than it being a transaction solely aimed at land disposal and securing the maximum capital receipt the Council wanted to secure a specific type of development to ensure appropriate and the most beneficial regeneration and a range of economic and other outcomes from the development of the site. This brings the matter in to the remit of the public procurement regime due to the works we were seeking to procure.

The competitive tendering process undertaken is known as competitive dialogue, in compliance with the OJEU Regulations. OJEU stands for the Official Journal of the European Union.

The Council sought, through the competitive tendering process, to secure redevelopment of the site (comprising the New Walk Centre site and the adjacent former Marlborough House site) that met the Council's desire is to create a new destination that links people to other elements of the City and contributes to the five key themes in the Council's 2012 Economic Action Plan (EAP). The development had certain parameters outlined that determined what uses were welcomed and what uses were not welcomed.

In determining the requirements, the Council had looked to maximise its revenue from Business Rates income, council tax income and new homes bonuses, as well as ensuring the creating of new jobs in the city. As a consequence, and through the competitive dialogue procurement process, in addition to the potential of a capital receipt (based on residual land value), the Council has secured a £30m regeneration project, the creation of in excess of 600 new jobs, £0.15m business rates retention per annum, council tax income and a New Homes Bonus for each residential unit on the site.

You have asked specifically if ministerial approval of the disposal has been sought. This would be required if, under S123 of the LGA 72, the Council were disposing of the site for less than best consideration which can reasonably be obtained. Case law has established the following principles:

- what is 'reasonable' in any particular case depends entirely on the facts of the transaction
- the council may have regards to other considerations in addition to the purchase price, including ethical and commercial considerations.
- The duty does not mandate the council to have regard to any particular factors in a disposal
- The council is entitled to have dual objectives, one being the intention to obtain capital receipt and the other being regeneration ([*Faraday Development Limited v West Berkshire Council*](#) [2016] EWHC 2166 (Admin) where the court held that The ability of the potential development partners to deliver regeneration on such a challenging and complex site was "directly relevant, indeed critical, to the satisfaction of the obligation under s123(2)", and in such circumstances, the council was "entitled to focus on its assessment of the experience and expertise of the developers bidding in order to form a view as to how those uncertainties could best be addressed.")

As outlined above the Council appointed the developer via a complaint public procurement in accordance with the legal requirements. Based upon the requirements as set out in our ITT, and through undertaking that competitive procurement process, the Council obtained what it believes is the best purchase price for the site when balanced against meeting its main objectives of securing the required regeneration in the manner set out in its ITT.

Further, understanding the complexities around the need to secure regeneration and a capital receipt in a complex transaction the Council did appoint professional specialist advisors (Ernest and young, EC Harris, Lambert Smith Hampton and Anthon Collins) from the outset to assist in advising and securing both these objectives and ensuring best consideration. In light of the specialist advisors on this matter, the robust competitive procedure and the matters outlined above, the council believes that the land is to be disposed of for best consideration taking in to account the circumstances of the project. On that basis no notification to the relevant minister was required.

Kamal Adatia
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(Part-Time - Monday, Tuesday and Wednesday only)

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From: Kamal Adatia
Sent: 12 February 2018 15:58
To: [REDACTED]
Subject: RE: Sale of NWC site

Thank you Councillor [REDACTED]

I'll look into this by liaising with colleagues, and revert to you.

Kamal Adatia
City Barrister & Head of Standards
Monitoring Officer
Leicester City Council

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From: [REDACTED]
Sent: 10 February 2018 11:40
To: Kamal Adatia
Subject: Sale of NWC site

Dear Kamal,

following the revelations in the Leicester Mercury that the council sold the former site of the Council HQ for £24,000 please can you explain how this complied with S123 of the Local Government Act.

I am sure the correct process was followed and that an independent valuation was sought for the site both before and after demolition of the buildings. Obviously the values would be significantly different.

I have asked on three occasions now, once at scrutiny in 2015 and twice since, of officers, what the site was valued at. I have never had an answer. I would be grateful if the report containing the independent valuations was now shared with members, preferably on a public basis.

Please can you confirm that Ministerial approval was sought and obtained for the disposal of the site, and if not why not?

Regards

[Redacted]

[Redacted]

[Redacted]

Leicester City Council

[Redacted]