

Disposal of the Old Gaol Site

Summary Report

Vale of White Horse District Council

Audit 2008/09

April 2009



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Status of our Reports

The Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body. Reports prepared by appointed auditors are addressed to non-executive directors/members or officers. They are prepared for the sole use of the audited body. Auditors accept no responsibility to:

- any director/member or officer in their individual capacity; or
 - any third party.
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Summary report

Introduction

- 1 The Vale of White Horse DC is in the process of disposing of the Old Gaol site in Abingdon. The site is on the banks of the Thames with special features and the Council planned to dispose of it in a manner sensitive to the Council's aspirations for the site.
- 2 There was some concern from members of the public regarding the proposed sale. Two members of the public contacted the District Auditor and one unsuccessful tenderer complained to the Council. The Council invited the Audit Commission to review the project. The District Auditor concluded that a review was required to cover the whole range of issues including the letting of the contract and the process followed by the Council to gain assurance that its procedures were sound.
- 3 Questions have been raised about:
 - Whether the tender process has been undertaken properly and fairly.
 - Why the contract was renegotiated, the terms of the renegotiation, whether these were fair and reasonable and whether the Council has or should have considered re-tendering the project.
 - Whether the renegotiated contract still represents best consideration.
 - Whether the successful bidder Cranbourne Holdings Limited (CHL) had an unfair advantage as they had previously speculatively purchased land and property on an adjacent site.
 - Whether an employee of a firm of planning consultants used by Cranbourne who left to work for Oxfordshire County Council and worked on the Old Gaol highways access arrangements and then subsequently rejoined the firm of planning consultants could have influenced the decision to agree road access to Cranbourne Homes whilst at the County Council.
 - Allegations that directors of CHL were associated with previous failed companies.
- 4 These issues are being treated as 'information received during the audit' rather than formal submissions or statutory objections requiring a formal response. If these or similar issues are raised formally or an objection is made to the accounts then the District Auditor will have to consider any such representations. The views expressed in this document cannot be considered to bind the auditor's judgement. However the auditor may have regard to the scope of this work and the conclusions reached. This report is intended to:
 - raise issues for the Council to consider; and
 - consider whether, at this stage, we need to take any formal audit action.

Background

- 5 The Council sought a development partner for land and property comprising the Old Gaol complex. From the 1970s until 2002 the Old Gaol was Abingdon's public leisure centre. It closed with the opening of a new, purpose built facility, located on the other side of Abbey Meadow. The Old Gaol site is a prominent gateway to, and integral part of, the oldest parts of Abingdon with a high visual impact, especially from the River Thames.
- 6 The Council sought to achieve a development of a sufficiently high calibre to satisfy the Council, both as land owner and planning authority.
- 7 The Council prepared a development brief for the project and any scheme was required to:
 - Make a positive contribution to the visual amenity of the area.
 - Make a major contribution to the vibrancy of the town centre both for local people and for visitors.
 - Encourage controlled (commercial) access by the general public through the courtyard and ground floor of the Old Gaol to the riverside garden.
 - Make the best use of its waterside location and the historic buildings on the site.
 - Demonstrate good value for money in terms of the capital receipt receivable, general use of a prime riverside location and, should housing be provided on the Old Gaol site, affordable housing provision in accordance with the requirements of the Local Plan.
- 8 The Old Gaol site is situated on the banks of the river Thames immediately next to the Abingdon Bridge and lies within the town centre conservation area. Fronting principally onto Bridge Street, the development site is approximately 0.5 of a hectare in size and includes the following properties:
 - The Old Gaol
 - 1 & 2 Bridge View
 - 25 Bridge Street
 - 27 Bridge Street
 - Turnagain Lane
 - The Old Police Station

Audit approach

- 9 We reviewed the disposal from the initial proposals up to and including the renegotiation of the contract. This report summarises our findings on:
 - the consideration given to how the site should be redeveloped;
 - the disposal and tender process - compliance with legislation, standing orders and financial regulations;

Summary report

- renegotiation of the tender - compliance with legislation, standing orders and financial regulations;
 - other issues; and
 - opportunities for improvement.
- 10** The review was based on a desktop review of documents followed by a site visit to the Council and a site visit to the Old Gaol site.
- 11** Interviews were held with the:
- Leader of the Council (Cllr Tony de Vere)
 - Leader of the Opposition (Cllr Melinda Tilley)
 - Chief Executive (David Buckle)
 - Strategic Director & CFO (Steve Bishop)
 - Monitoring Officer (Tim Treuherz)
 - Project manager for the development (Andrew Morgan)
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Main conclusions

- 12** The Council had carefully considered the future use of the site taking into account social, cultural and economic considerations both for the area and the Council's own finances. The Council made a reasonable decision on the basis of the information presented on how best to proceed with disposal of the Old Gaol site.
- 13** The disposal and tendering exercise was carried out in two discreet stages. The first step short listed four preferred development partners to be invited to the next stage. We concluded that this had been carried out fairly and in accordance with sound and proper procedures.
- 14** The four preferred partners submitted tenders which were evaluated against the development brief criteria, the affordable housing perspective and the financial considerations. The process complied with standing orders and financial regulations. The bids were carefully analysed and the contract was awarded to the highest bidder CHL. This achieved the Council's objectives both on qualitative and financial issues.
- 15** We note, however, that aspects of the arrangements for obtaining and relying on valuation and legal advice at this stage could have been improved. In particular:
- The Council's property advisors had not been appointed in full compliance with Standing Orders and Financial Regulations.
 - The property advisor's advice on this scheme was not fully documented.
 - Legal advice on the Council's duty to obtain best consideration was not fully documented.
- 16** The successful developer CHL approached the Council shortly before the initial requirement to obtain planning permission expired and asked for the contract to be renegotiated because of the decline in the property market. The Council entered into negotiations and a revised contract was agreed.

- 17** The Council were of the view that the renegotiated deal was the best that could be achieved in the circumstances and still provided good value for money. We reviewed the grounds on which the Council made this decision. On the basis of the information available to us we believe that this was a reasonable decision in the circumstances. We formed this view because:
- The expected receipt is still projected to be substantially higher than the second highest tender.
 - The sales proceeds predicted to arise from this development had been carefully reviewed by the Council and it had secured safeguards should the eventual proceeds increase.
 - We also agreed with the Council's view that it was unlikely given the decline in the property market that a re-tendering exercise would have produced a better outcome in the prevalent economic climate.
- 18** However we found weaknesses in the approach, particularly in the provision of legal and valuation advice, in particular:
- The Council did not obtain a documented legal opinion on its contractual position under the existing contract before entering into negotiations on revising the terms of this contract.
 - Consideration should have been given when drafting the original contract to whether more specific penalty clauses covering failure by the developer to apply for and obtain planning permission within a reasonable time period could have been included in the contract.
 - The Council did not obtain formal professional advice at the time that the revised contract achieved the best consideration as required by S123 of the LGA 1972.
 - The report to members on the renegotiations could have been clearer on the financial changes and should have been more specific on the options open to members, but we believe these matters were clarified in the meeting of the advisory group.
- 19** CHL had previously purchased Twickenham House, an adjacent property to the Old Gaol site. The Council was aware of this and that it offered a competitive advantage to CHL. We found no evidence that this was unfair.
- 20** Questions were asked about whether a former consultant who worked for Oxfordshire County Council, and before and subsequently with Cranbourne Homes Consultancy could have influenced the decision to agree road access to the site whilst at the County Council. We concluded that the District Council was entitled to rely on the statutory highway authority's decision on vehicle access.
- 21** The allegation that some of CHL directors have been associated with previous failed companies had been investigated by the Council's monitoring officer and Internal Audit. The Council had previously carried out research into the status of CHL as part of the bid evaluation and concluded that it was a reputable company. We were satisfied that the Council had given appropriate consideration to this concern.

Recommendations

- R1** The Council should ensure that in so far as this contract has not yet become unconditional it does all that it can to safeguard itself against the possibility of further challenge and in particular it should:
- Obtain a valuation of the site for the purposes of demonstrating that it has achieved the best consideration in accordance with S123 LGA1972.
 - Obtain a retrospective legal opinion on its contractual position under the existing contract at the time before it entered into negotiations on revising the terms of this contract to document its position in case of future challenge.
 - Consider any issues that this might raise.
- R2** In any future disposals the Council should:
- Ensure that it has clearly set out what it expects from its property advisors.
 - Ensure that its advisors are properly appointed in accordance with financial regulations and standing orders.
 - Document and retain any valuation advice.
 - Consider the need for a formal site valuation before proceeding.
 - Ensure that any significant legal considerations are reported.
 - Set up a review process to consider whether the terms of its legal documents fully protect the Council's interests.
 - Ensure that any reports to members are as clearly written as possible.

Appendix 1 – Action Plan

| Page no. | Recommendation | Priority 1 = Low 2 = Med 3 = High | Responsibility | Agreed | Comments | Date |
|----------|---|--|----------------|--------|----------|---------------|
| 7 | <p>R1 The Council should ensure that in so far as this contract has not yet become unconditional it does all that it can to safeguard itself against the possibility of further challenge and in particular it should:</p> <ul style="list-style-type: none"> • Obtain a valuation of the site for the purposes of demonstrating that it has achieved the best consideration in accordance with S123 LGA1972. • Obtain a retrospective legal opinion on its contractual position under the existing contract at the time before it entered into negotiations on revising the terms of this contract to document its position in case of future challenge. • Consider any issues that this might raise. | 2 | Steve Bishop | Yes | | 17 March 2009 |

Appendix 1 – Action Plan

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The Audit Commission

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