

Chichester District Council

OVERVIEW AND SCRUTINY

18th September 2018

Call In – Development Site, The Grange, Midhurst

1. Contacts

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2. Recommendation

2.1 That the Committee consider the call-in request, and determine whether to:

- a) **Uphold the original Cabinet decision, or**
- b) **Refer the matter back to Cabinet, for further consideration, or**
- c) **Refer the matter to Council for consideration.**

3. Background

3.1 Cabinet received a report at their meeting on 4 September regarding the disposal of a development site at the Grange, Midhurst. A decision was made at that meeting, in accordance with officers' advice to dispose of the site. That decision was subsequently subject of a call in request. That request has been accepted by the Chairman of this Committee. This Committee is responsible for considering the submission made, and having assessed the substance of the submission whether the decision of Cabinet to dispose was properly reached.

3.2 The call in request is attached as Appendix 1. It makes three assertions, that :

- **The legal advice on S123 was not comprehensive and necessarily accurate, having been updated in 2006 and subject to a number of legal challenges and reviews, leading members to possible erroneous decisions.**
- **The chairman was graceless and restricting in his handling of public questions.**
- **There was a complete lack of consultation with the local community along with a similar lack of consultation and briefing with the local members.**

3.3 Legal advice was provided to the Cabinet meeting by the Monitoring Officer as senior lawyer to the Council. Officers have reviewed this advice and remain of the opinion that the Council is bound, by law, to accept the best consideration available for the site.

3.4 The law in this regard is quite clear. Local authorities are bound by law to seek "best consideration" when disposing of their assets, including land. There are some very exceptional circumstances where a local authority may dispose of land for a

consideration less than the best. However, in such circumstances the local authority must consider its fiduciary duty to its residents and tax payers, as well as comply with normal and prudent commercial practices. The Council must have a clearly demonstrable justification for accepting a lesser value to help it secure the promotion or improvement of the economic, social or environmental well-being of its area. Currently there is no such established justification, nor is there a significant demand for particular retail or office development as demonstrated by the bids received.

- 3.5 In the absence of any demonstrable justification for accepting a lesser consideration such action would be deemed as unlawful. Such a decision would also be in breach of state aid rules as the Council would be subsidising a private sector organisation.
- 3.6 The conduct of the Leader as Chairman of Cabinet has been reviewed and the Monitoring Officer was present at the meeting to observe his handling of the meeting. All relevant procedural requirements as Chairman of Cabinet were met, and no breach of the Code of Conduct in the handling of the meeting was identified. .
- 3.7 With regards to the lack of consultation with the community on the proposed disposal, there is no formal requirement to consult as to disposals of land under S123, the sole formal requirement being the need to achieve best value. To have consulted would have been inappropriate given the overriding requirement to obtain best consideration. However should the disposal proceed consultation with the community would take place through the planning process for the site.
- 3.8 District members were kept informed regarding progress of the tender returns at Full Council and were aware that it would come to the September Cabinet for a decision. This was also publicised through the forward plan. A pre-cabinet briefing for ward members was also offered.

4 Outcomes to be Achieved

- 4.1 To establish whether the matter considered by Cabinet followed the correct procedure and reached a logical and lawful decision. To consider whether the decision should be upheld, or be referred for further consideration

5. Proposal

- 5.1 The call in application asks that the matter be referred to Full Council for consideration. Paragraphs 30 to 35, Part 4.5 of the Council's Constitution set out the procedure to be followed when a call in has been received.
- 5.2 The options before the committee are to either uphold the original Cabinet decision, or refer the matter back to Cabinet for further consideration. The committee could refer the matter to Council for consideration. However, the committee are reminded that Council is not able to overturn the original decision unless that decision was contrary to existing policy or budget approval. That is not the case in this matter, which means that Council can in turn only either uphold the original decision, or refer the matter back to Cabinet.
- 5.3 Officers have reviewed the decision made by Cabinet, and recommend to Overview and Scrutiny that the decision should be upheld.

6. Alternatives that have been considered

6.1 It is a Constitutional role of this Committee to consider call in requests of this kind, subject to the controls within the Constitution including the acceptance of the Chairman which has been granted in this case.

7. Resource and legal implications

7.1 The Council is under a duty to comply with **Section 123 of the Local Government Act 1973** and the disposal decision made by Cabinet is considered by officers to provide the proper way of achieving that legal requirement.

7.2 As an open market exercise, disposal to a preferred bidder will achieve the maximum income to this authority and also ensure that the Council is able to demonstrate it has acted within the requirements of State Aid and other Competition Act requirements as well as being within the broad requirement to achieve best value.

8. Consultation

8.1 The Councillors submitting their evidence to the Committee have set out the parties they intend to present by way of support for their three concerns set out in section 4 above.

9. Community impact and corporate risks

9.1 The immediate impact of this decision is to provide a “check and balance” to the decisions of cabinet. If the decision is upheld then the disposal will proceed, subject to contract and the planning process. If the decision is not upheld then it will be returned to Cabinet (or Cabinet following an initial report to Council).

9.2 There is a risk that by extending the decision process it may impact upon persons bidding for the site who may withdraw their offer which would impact upon the value being achieved from the site, and delay the disposal process.

10. Other Implications

Are there any implications for the following?		
	Yes	No
Crime & Disorder:		X
Climate Change and Biodiversity:		X
Human Rights and Equality Impact:		X
Safeguarding and Early Help:		X
		X
Other (Please specify):		X

11. Appendices

Appendix One – copy of the Call in request

12. Background Papers

Report to Cabinet 4th September 2018

Note : A Part 2 paper was submitted to cabinet the contents of which are not relevant to this call in (detailing the bidders and their financial bids).