

Appendix D

Under-value and State Aid issues in relation to land disposal.

1.0 Disposal at an Undervalue

The Council must dispose of its property in accordance with the Local Government Act 1972: General Disposal Consent (England) 2003, which considers the sale of land for less than best consideration. This requires them to provide a restricted sale value (allowing for all the conditions which the Council has placed on the sale) and an unrestricted sale value.

1.1 The Council can sell at an undervalue without the requirement for approval from the Secretary of State, in line with the following specified circumstances:

(a) The local authority considers that the purpose for which the land is to be disposed, is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:

- (i) The promotion or improvement of economic well-being;
- (ii) The promotion or improvement of social well-being;
- (ii) The promotion or improvement of environmental well-being; and

(b) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

1.2 Officers advise that the development could be considered to achieve economic and social benefits but it is difficult to value the quantum of such benefits. Conditions imposed would fit within the economic and social wellbeing detailed above and the land is, therefore, capable of being sold at less than best consideration. The undervalue is less than £2m; therefore the Council can dispose at an undervalue without the consent of the Secretary of State.

2.0 State Aid

2.1 In addition to considering Secretary of State regulations, the Council also needs to comply with the European Commission's State Aid rules. The Commission's Communication on State Aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general guidance on this issue. When disposing of land at less than best consideration, authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs, authorities must ensure that the nature and amount of subsidy complies with the State Aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

2.2 There is a de-minimus level of 200,000 Euros over a rolling three-year period which would allow an undervalue to be granted within the State Aid rules. As a consequence, even if Council were minded to accept an undervalue offer on grounds of Social, Economic and Environmental grounds, the value being offered currently could not be accepted without further examination of the transaction by the EU.

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2.3 Officers are of the view, therefore, that should a sale at an undervalue be agreed by the Council, additional specialist legal advice will be necessary prior to any offer being accepted.