

## **DISPOSAL OF LAND AT WEDAL ROAD**

### **REPORT OF THE CABINET MEMBER INVESTMENT & DEVELOPMENT**

#### **AGENDA ITEM: 6**

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**Appendices 2 and 3 of this report are not for publication as they contain exempt information of the description in paragraph 14 of Part 4 and paragraph 21 of part 5 of Schedule 12A of the Local Government Act 1972.**

#### **Reason for this Report**

1. To request that Cabinet consider the decision of the Policy Review & Performance (PRAP) Scrutiny Committee's to refer back the called-in Officer Decision relating to the off-market disposal of a 0.55 acre site at Wedal Road, Cardiff (shown edged in red on the plan attached at Appendix 1) to Cardiff & Vale University Health Board (the UHB) at a market valuation agreed in accordance with the Welsh Government, National Asset Working Group, Land Transfer Protocol (the Protocol).
2. In view of the obvious political sensitivity of the decision evidenced by the associated press and social media coverage, to seek Cabinet's approval of a recommendation to dispose of the site to the UHB on the basis referred to in the original officer decision.

#### **Background**

3. The site is located in the Cathays Electoral Division and, until its closure on 2 March 2018, was the location of a Council operated Household Waste Recycling Centre (HWRC). The decision to close the HWRC and declare the site surplus to the service area's requirement was taken by the then Cabinet at a meeting held on 16 July 2015. The decision was the subject of a member call-in, which the then Environmental Scrutiny Committee considered at a meeting held on 26 August 2015, when it was decided to refer the decision back to Cabinet. The Cabinet subsequently confirmed its original decision to close the site at its meeting held on 1 October 2015 and the 2016/17 Corporate Asset Management Plan, approved in January 2016, earmarked the site for disposal during 2017/18.
4. I set out the arrangements for the disposal of the site by way of a response to an oral question on my Council Statement at the Council meeting held on 30 November 2017. The arrangements were confirmed in the Cabinet

Report “*Review of Household Waste Provision*”, considered by Cabinet at its meeting on 15 February 2018. The report explained that it was intended to dispose of the site at public auction on 6 March 2018 with a view to completing the sale on or before 31 March 2018. However, having consulted with me, the Director of Economic Development subsequently decided to dispose of the site to the UHB and a related Officer Decision was published on 20 March 2018 to give effect to that decision.

5. The Officer decision was called-in, by a member representing the adjacent Heath Electoral Division. The call-in was considered by the PRAP Scrutiny Committee at a special meeting held on 18 April 2018. The Committee confirmed by way of a letter dated 19 April 2018 (attached at Appendix 2) that it had decided to refer back the decision to the Director. The key concerns leading to the decision to refer back the decision are set out in the letter can be summarised as follows:
  - a) the land should have been sold at auction and not off-market to the UHB
  - b) the agreed land valuation was understated;
  - c) the existing procedure governing the disposal of land and property is in the need of review.

#### **Council Procedure for the disposal of land & property**

6. Decisions relating to the acquisition and disposal of a Council interest in land and property are overseen by the Corporate Asset Management Board (CAMB), which is chaired by the Chief Executive. In relation to the disposal of land and property declared surplus to a service area’s requirement, the Council adopts the following procedure:
  - a) First, the CAMB considers whether there is an alternative council use for the property including the provision of social/affordable housing;
  - b) Secondly, if no alternative Council or housing use is identified, the property is offered to other public sector partners via the Partnership Asset Management Board, which is again chaired by the Chief Executive. In the event that a public sector partner expresses an interest in the property, both parties adopt the process set out in the Protocol referred to in paragraph 1 above. The Protocol, issued by Welsh Government in June 2014, is described as ‘A Best Practice Guide’ for the disposal, transfer, shared use and co-occupation of land and property assets between publicly funded bodies in Wales. The Protocol recommends that assets should be valued at market value in accordance with Royal Institution of Chartered Surveyors (RICS) Standards, and that reference should be made to the current RICS - Valuation – Professional Standards (Red Book). I am advised that this involves the appointment of an independent valuer to establish the market value for the site.

- c) If no public sector partner expresses an interest in the property then it would be offered for sale on the open market with the method of disposal being determined by the Council's Surveyor based on a range of factors including maximising value; conditionality; ease of sale; and, in some circumstances, future use.

### **Process adopted for the disposal of the Wedal Road site**

- 7. As explained in paragraph 3 above, the site was first declared surplus to the service area's requirement in July 2015 and was earmarked for disposal in 2017/18 in the 2016/17 Corporate Asset Management Plan and brought to the attention of the Partnership Asset Management Board later in 2016. The UHB expressed an interest in acquiring the site but explained that, at that time, it was unable to identify the necessary funding to enable the acquisition to proceed. There were no other public sector expressions of interest.
- 8. As set out in paragraph 4 above, the site was taken to market in February 2018 following confirmation that the site would close on 2 March 2018. The Council was eager to complete the sale and generate the associated capital receipt prior to the end of the financial year in order to support the 2017/18 capital programme. It was for that reason that it was decided to dispose of the site by way of public auction.
- 9. In advance of the auction date, the UHB approached the Council expressing a renewed interest in acquiring the site and confirmed that the necessary funding was available to complete an unconditional purchase of the property within the Council's timeframe. The UHB indicated that it would also cover the Council's abortive costs associated with marketing the site for disposal via auction. On that basis, it was agreed to proceed to dispose of the property to the UHB at an agreed market value.
- 10. In accordance with usual custom and practice, the sale was conducted on the basis of the provisions of the Welsh Government Protocol and the parties agreed to appoint an independent external Chartered Surveyor to establish the market value of the site. The surveyors report is attached at Appendix 2. A copy of the heads of terms is attached at appendix 3.
- 11. The Council's Procedure Rules relating to the acquisition and disposal of land and property requires Cabinet approval for any transaction in excess of £1 million. Given that the site valuation did not exceed that threshold, authority to dispose of the site was progressed via an Officer Decision Report, published on 20 March 2018 and attached as Appendix 4.

### **Response to the Scrutiny Committee's Concerns**

- 12. **a) the land should have been sold at auction and not off-market to the UHB**
  - i) The Scrutiny Committee noted the process followed by the CAMB when disposing of land and property; acknowledged the Council's responsibility to consider the wider social benefits; the need to

operate within Welsh Government guidelines; and understood the importance of public sector partnership relations. However, the Committee suggests that the land at Wedal Road should not have been removed from public auction given the pressing need to deliver £40 million from asset disposals in 2018/19 and that, instead the Council should take the property to public auction with a higher reserve.

- ii) The Committee does not explain why, in this particular instance, the Council should depart from its stated policy or from the usual custom and practice nor does it indicate the level of the higher reserve which it believes should have been set at a public auction or the basis on which that reserve should be calculated. Furthermore, the Committee is mistaken in its belief that the Council needs to generate £40 million of capital receipts in 2018/19. The requirement is to generate £40 million over the medium term.
- iii) In certain circumstances it is entirely appropriate for the Council to agree to an off-market disposal of land and property, including:
  - sales to adjacent landowners to enable a more sustainable development or
  - where the Council is seeking to facilitate a strategic project that delivers significant economic, social or environmental benefit or
  - where it is in the public interest to enable other public sector partners to deliver public services.
- iv) The current Administration has made clear that it participates in the activities of the Local Services Partnership Board and the Partnership Asset Management Board as a willing partner and active partner in public service collaboration. On that basis, where the Council can help meet the needs of a partner organisation or facilitate the aspirations of a partner organisation, the presumption is that the Council will respond positively to such a request. In the case of property disposals, the Council seeks to ensure that it acts in a way that maximises the overall public benefit rather than simply seeking to maximise the amount of a capital receipt. The Council adopts the Protocol agreed by Welsh Government, which is fair and designed to protect the interest of council taxpayers by requiring property disposals to be completed at market valuation.
- v) The position of the Administration is clear that the decision to dispose of the Wedal Road site to the UHB was legitimate, justified and best serves the public interest generally.

**B) the agreed land valuation was understated**

- i) The Scrutiny Committee appears to suggest that the agreed land valuation is understated and, that an open market sale would have

generated a larger capital receipt. A sale at auction might have generated a higher capital receipt had a buyer with a special interest been present. Equally, on the day, it might have failed to sell at all. However, this completely ignores the fact that there are established arrangements in place to agree a market valuation when disposals occur between public sector organisations, which the Council adopted in this case.

- ii) I am concerned that some members might have misunderstood the principles for agreeing the market valuation or what some of the figures included in the valuer's report represented. At the call-in meeting, a member suggested that the valuation report indicated that the Council could expect to realise some £2.5 million if the site was sold for residential development. Unfortunately, this was reported in the press and other publications as well as on social media, which risks inflicting reputational damage on the Council. The contention is entirely without substance.
- iii) For the avoidance of doubt, the agreed market valuation represents the residual value of the site for a residential use. The £2.5 million figure, to which the member referred, is the valuer's estimate of the Gross Development Value of the site on completion of the development, i.e. the amount that the completed development would be expected to realise after it is built and if each unit was sold at a price representative of the local market. The residual value, which represents the agreed market valuation, is arrived after deducting:
  - site remediation costs, including the cost of dealing with any site "abnormals";
  - the cost of providing necessary site infrastructure;
  - costs incurred to meet any planning obligations;
  - the cost of constructing the development including the developer's profit and associated fees.
- iv) Cabinet should note that the development of the Wedal Road site is constrained by certain "abnormals" including a mains sewer, which crosses the northern extent of the site (illustrated on the site plan attached) which will restrict the number of residential units that the site can accommodate. Furthermore, there is a significant amount of material, which will require removal prior to development.
- v) At the meeting, a member suggested that these costs should be borne by the buyer and not the seller. Again, this is a suggestion that does not bear scrutiny, as anybody that has sold a property will understand. The market value of any property will always reflect its condition.
- vi) At the meeting, I was asked whether I would be prepared accept a higher offer if one was received. This is important, as Cabinet will be aware that recent press reports claim that a developer would be prepared to do so. In response, I made clear that the Council would

not be prepared to act in such an unprincipled way. Notwithstanding the fact that the Council had agreed to sell the site to the UHB for the reasons previously rehearsed in this report, I indicated that even in circumstances where a property was sold on the open market the Council would not entertain a further offer once a sale had been agreed. I emphasised that the Council conducts business in an ethical manner and that failure to do so would risk serious reputational damage and risk the Council being subject to similar treatment when seeking to acquire a property.

- vii) For the reasons set out in the report, the Administration does not accept the suggestion that the agreed market value is understated and believes that the agreed market valuation included in the valuation report is both fair and proper.

**c) the existing procedure governing the disposal of land and property is in the need of review.**

- i) The Scrutiny Committee unanimously agreed that Council Officers have followed the appropriate protocol in taking the decision to dispose of the site to the UHB. However, the Committee suggested that there may be potential to reconsider the disposals protocol and, as such, the Committee would encourage the Director of Economic Development to undertake a review as a matter of urgency.
- ii) In its letter, the Committee acknowledges the Director of Economic Development's explanation provided at the meeting that he "is legally restricted to one valuation". The Committee states that it believes that "procedures should be for guidance" and that it considered the fact that there had been no active seeking of additional valuations to be "disconcerting". Cabinet will note that the Committee is exploring with the Director of Legal and Governance, independently of this call-in, whether this restriction needs to be reconsidered, to ensure the Council is supported in its need to maximise income from disposals.
- iii) For possibly good reason, the Committee may have misunderstood the Director's explanation regarding the potential of obtaining alternative valuations. In stating that he "is not allowed to obtain a second valuation", the Director was not intending to suggest that there is a strict legal impediment to doing so but that the Council's legal team would not advise him to do so in circumstances where the disposal is proceeding in accordance with the provisions of the Welsh Government Protocol.
- iv) Notwithstanding the above, Cabinet will note that the Council does have the benefit of two valuations undertaken by qualified Chartered Surveyors – one external and one internal – including in this case. Following proper negotiation, the Council's own surveyor concurred with the valuation provided by the independent external valuer. Furthermore, even if the Council engaged a second independent valuer, at significant additional cost, it is highly unlikely

that a qualified Chartered Surveyor adopting the Red Book valuation methodology would arrive at a significantly different valuation. For those reasons, the Director has indicated that he is not persuaded to recommend that the Council undertake the review suggested by the Scrutiny Committee.

- v) The Director of Legal & Governance has also responded to the Committee and her correspondence is attached at Appendix 6.

#### **Local Member consultation**

- 13. Local Members were notified of the decision to declare the property surplus in February 2016 and raised no objections to the disposal of the property. In February 2018, immediately prior to disposal, local members were again consulted and, again, no objections were received.

#### **Reason for Recommendations**

- 14. To agree a suitable response to the PRAP Scrutiny Committee following its decision to refer back the original Officer Decision and to approve the disposal of surplus Council owned land to secure an early capital receipt.

#### **Financial Implications (provided by Section 151 Officer)**

- 15. Disposal of the site will generate a capital receipt towards targets set in the capital programme. A prompt disposal should take place to minimise the costs of maintaining the property whilst vacant.

#### **Legal Implications (provided by Monitoring Officer)**

- 16. The Council is required to obtain the best consideration reasonably obtainable from its property disposals pursuant to section 123 of the Local Government Act 1972.

### **RECOMMENDATIONS**

Cabinet is recommended to:

- 1. Approve the content of this report as the basis of its response to the decision of the PRAP Scrutiny Committee to refer back the Officer Decision to the Director of Economic Development.
- 2. Authorise the disposal of Council owned land at Wedal Road edged red on the site plan at Appendix 1 via an off-market transaction to the Cardiff & Vale University Health Board on the terms set out in confidential Appendix 3 and based on the market value established by the independent valuer's report attached at confidential Appendix 2.

**COUNTY COUNCILLOR RUSSELL GOODWAY  
CABINET MEMBER INVESTMENT & DEVELOPMENT**

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| <b>SENIOR RESPONSIBLE OFFICER</b> | <b>Neil Hanratty</b><br><b>Director of Economic Development</b> |
|                                   | <b>11 May 2018</b>  |

*The following appendices are attached:*

Appendix 1 – Site Plan

Confidential Appendix 2 – Independent Valuation

Confidential Appendix 3 – Heads of Terms

Appendix 4 – Officer Decision Reports

Appendix 5 - PRAP Scrutiny Committee call-in letter

Appendix 6 – PRAP letter to Director of Legal & Governance