

Report of the Town Clerk

Bank Hill land disposal.

Background

1. Council is required to prepare an up to date asset register, and to account for any and all disposals of land or other assets.
2. In addition there are specific regulations which require councils to act in a particular way when disposing of land. Most relevant is *Government Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained. (the Consent)*.
3. The facts of what happened are not in dispute. BTC applied to NCC for the transfer of a property to BTC, and then transferred it, without payment, to Berwick Preservation Trust. The land consisted of a derelict former public toilet and an adjacent patch of open space. A relevant email setting out the views of the then Town Clerk is attached as Email A. A relevant portion of a subsequent email is set out at Email B.
4. Most relevant to this disposal is the requirement of the circular that in determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. (para 9 of the circular)
5. Sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space under those powers to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. The circular states 'Authorities should carry out these procedures before making any final decisions about disposal as the public response to the notices may be material to any such decision.'
6. 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. In this case, BTC should also have considered whether any other aid it was aware of, such as grants under the Portas scheme, may have further engaged the State Aid rules. Even though it is unlikely that such a transaction would engage the State Aid rules it is essential that accurate records are kept demonstrating that this has been at least considered.
7. The circular strongly advises that a competent valuation be obtained prior to disposal. It says "By following this advice, an authority will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the

same step by step valuation process on each occasion. Supporting documents will provide evidence, should the need arise, that an authority has acted reasonably and with due regard to its fiduciary duty. “

8. There are no supporting documents that give me any comfort or evidence that council has acted reasonably and with due regard to its fiduciary duty.
9. My reasoning for reaching that conclusion is as follows;
 - a. There is no evidence of a valuation being undertaken.
 - b. There is no evidence of the disposal being advertised.
 - c. There is no evidence that the issue of State Aid was considered.
 - d. Councillors were misadvised by the Town Clerk telling them that the transfer was permissible without qualification, and
 - e. The decision appears to have been taken by an incomplete and insecure email poll, not via a decision of properly constituted meeting of council which meant that there is no evidence that councillors were given any opportunity to declare any relevant interests.
10. The questions I have to address as your Responsible Financial Officer and Town Clerk are
 - a. Is this transaction relevant to this year's accounts?
 - b. Is this issue relevant to this years Annual Governance Return?
 - c. Are there any steps we ought to take to prevent this error recurring?
 - d. Are there any individuals whose conduct gives such cause for concern that further action is required?
 - e. Should the Town Council seek to reverse these transactions?
11. Is this transaction relevant to this year's accounts?

No. the recording of assets in local council accounts is for record keeping and stewardship purposes, not for their value to the entity. If BTC were an organization with a balance sheet and surplus / deficit accounting, the answer to this question might be different.
12. Is this issue relevant to this years Annual Governance Return?

Only as evidence that council is, now, capable of seeing its past errors and addressing them. It is strongly arguable that, via the Hoey Ainscough Report, council has identified its past weaknesses and addressed them.
13. Are there any steps we ought to take to prevent this error recurring?

It is our view that internal controls are better and governance weaknesses have been and are being addressed. In particular delegations to officers are kept to a minimum and decisions of council are made on the basis of written reports.
14. Are there any individuals whose conduct gives such cause for concern that further action is required?

No. A Town Clerk who gives such poor advice as was evident in this case might find themselves subject to a capability process if they were still in post, but they are not.
15. Should the Town Council seek to reverse these transactions?

No. Whilst it is evident that the Preservation Trust were closely involved before the transfer from NCC in a way that would be unusual if a commercial transaction were intended, there is no evidence that they were aware of any fiduciary duty on the part of the Town Council, and they may have relied upon the same poor advice from the Town Clerk as was evidently provided to elected members.

Furthermore, it is my conclusion, on balance, that the Town Council could have achieved the same conclusion lawfully, if it had followed appropriate processes, provided there were no other bids for the property from interested parties. Clearly one person was interested in the property for commercial purposes, and the property is now tenanted by that person but it is impossible to speculate whether either NCC or BTC have suffered a financial loss as a result of the failure to follow due process. It may be that NCC have other documents or information that will allow them to decide if they have suffered a loss, but that is not within the scope of this report.

It is my conclusion that the primary concerns of the Town Clerk were to expedite the process and to end the public controversy that arose from the way in which NCC had handled the transfer, given that NCC had previously seemed willing to sell or rent the property out. Those concerns do not excuse the way in which the transaction was conducted, but they are primarily historic concerns.

Recommendations

1. That committee note the report.

Email A

“This is a long-running issue; the County Council, in deciding to transfer this asset to the Town Council was following its own community asset transfer policy, and made its decision in the light of both the Town Council’s and Mr Blackburn’s expressions of interest. If any members wishes to have County emails on the matter forwarded please let me know.

The essence of the Town Council’s expression of interest was to request the transfer of this facility to the Town Council, which would undertake its immediate refurbishment and redecoration, at an estimated cost of £5000, enabling the Town Council to provide a base for the Parks Development Officer and volunteers, who would need to store tools and equipment. This would be an adjunct to the Berwick Parks project – the plans as agreed for the Parks have no facility for such a base.

Mr Blackburn has now approached the Preservation Trust for support. I had previously discussed with the Trust, at their request, a number of small heritage-related projects which they might like to consider, as they felt they would like to give major projects such as The Granary, a rest for the time-being. The Bankhill toilet was rejected, but in view of Mr Blackburn’s approach they have reconsidered and have now proposed that, once the building has been transferred to the Town Council (heads of terms state nil consideration and the only condition being that the building should be repaired), the Council could then transfer the building to the Preservation Trust, also at nil consideration, which would then undertake, at the Trust’s expense, its restoration.

The Trust’s proposal is that it should then make the building available under lease to Mr Blackburn, should he wish to pursue his enterprise. If he succeeds, the building will be in use, a local businessman will have been assisted, and there will be an additional asset to the town’s visitor offer. If he is not able to proceed (there is no indication whether or not he has approached planners, and the land on which the building stands, and the immediately adjacent area, ie the area bounded in red on the attached plan, is designated highway so cannot be enclosed or developed which suggests his plans may not be realised), the Trust would lease it back to the Town Council (as with the Lion Allotments) at nil cost and the facility would be available for the use originally envisaged.

The advantages of this are clearly that the building is retained for the community and is restored at no cost to the Town Council. The fact that it might not be available for the

original purpose is not critical to the Parks Project (it was not part of the original application), but if it did become available it would be a benefit.

In view of Mr Blackburn's intense interest in the matter, and the fact that [name redacted] of the Trust is about to go away for 6 weeks - and it would be in everyone's interests to identify a way forward - it would be helpful if all members could express a view on this within the next few days (by close of play on Friday).

Could members indicate whether they agree that, once the building has been transferred to the Town Council, the Council then proceeds to transfer it to the Preservation Trust for renovation, and for use either by Mr Blackburn, or – if he does not proceed – for use by the Town Council in association with the Parks Project. A transfer from the Town Council to the Preservation Trust is entirely permissible.”

Email B

All members: a majority supported the proposal to transfer the Bankhill building to the Preservation Trust, and [name redacted] has been advised of this.

Below, for your information, is the outline of the Trust's plans. I have since clarified that obtaining necessary planning consents for the proposed use is not a condition of taking this project on, though you will see that Trustees' approval will be required once all the costs etc have been established.

At present, therefore, the focus will remain on getting the building transferred to the Town Council, and I am in touch with NCC about this. In the meantime, Mr Blackburn has been advised by the Trust simply that the Trust and Town Council are 'in discussions'.