

20 July 2006

Caroline Bull  
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Town Hall  
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Dear Caroline

### **Sale of Land at Minchery Farm**

The sale of land at Minchery Farm has been the subject of ongoing attention from the public and the media for a number of years. It has also been the subject of questions at audit from registered electors within the City, where specific concern has been expressed that the Council did not discharge its statutory duty to obtain the best value reasonably obtainable for the sale of that land.

The City Council signed an agreement to transfer the freehold of the football stadium site and adjacent land on 4th February 2000. The fee agreed for the sale was £1million, payable in instalments, together with a shareholding in the stadium company 'Newco' which was considered to be worth £600-£800,000. Of this gross value, 35% was payable to Thames Water in return for the lifting of certain restrictive covenants on the land. In November 2000, the Council decided to accept a capital receipt instead of the proposed shareholding in the Company.

It is fair to say that this review has taken a substantial amount of time to complete, in part at least because this matter is now some six years old, and the level of evidence available to demonstrate how the decision was reached has not been strong. Concerns regarding this transaction originally came to our attention in 2002/03.

I have now reviewed this transaction to discharge my statutory duties, which include the need to consider whether:

- the decision-making process was sufficiently robust and, as a result, whether the decisions taken were both within the law and a reasonable exercise of the Council's discretion;
- there are any matters which are sufficiently important to draw to the attention of the public as a matter of public interest.

In doing so I have been mindful of the fact that this matter is now very old, that the Council of today which has changed considerably should not be tarnished by any criticism of what happened then, but at the same time to ensure that any opportunities to learn from that disposal are taken by the current Council. I have therefore focussed on 3 key questions:

- (1) Did the Council secure the best consideration reasonably obtainable for the sale of this land?
- (2) Were there any weaknesses in the decision-making processes which led up to the sale agreement?
- (3) Would/could any such failures happen today?

**(1) Did the Council secure the best consideration reasonably obtainable for the sale of this land?**

**Very recent independent valuation advice does not expressly conclude that the best consideration was obtained, but does point out that given the planning constraints placed on the land, a significantly lower sale value could have been expected to have been achieved than the valuation obtained at the time of disposal. I am minded to accept this valuation advice.**

The Council took independent valuation advice at the time of the disposal, and reference is made on a number of occasions in council minutes that the Council was mindful of the need to obtain the best possible sale price.

A report to the Strategy and Resources Committee (SRC) of 7 September 1999 states that the Council would obtain: "A valuation of land subject to the conditions contained in the heads of terms. This means that the valuation will be subject to the requirement that the stadium has to be completed." Such a valuation was not obtained.

Two separate valuations were obtained on different bases, neither of which were wholly relevant to the proposed transaction. The Council acknowledges that the exact methodology and reasoning which resulted in the approach taken by the valuers is now a little unclear, but has presented its argument using the existing valuations, and then taking into account various encumbrances and restrictions on the land.

I agreed with the Council that these arguments would be significantly more credible if supported by the independent surveyors who produced the original valuations. This support was requested by the Council in May 2006, and additional valuation advice was provided on 26 June 2006.

This advice does not expressly state that in the opinion of the valuer best consideration was obtained. However, it does acknowledge that the planning requirement the Council placed on the land would have had a significant downward impact on the value of the land. The original planning consent for the development contained a planning condition that no leisure buildings on the site could be used until the adjoining football stadium was completed.

In terms of the council's obligation to get the best price reasonably obtainable, in deciding what is the best price any necessary constraints upon the land should be taken into account, this will include things like covenants, planning conditions and the such like. What is key is whether the constraint is necessary.

Based on the information available to me I am satisfied that in this case the planning condition requiring completion of the stadium was a valid condition in the context of the site as a whole and the legitimate planning objective of having a completed commercial development including the stadium.

**(2) Were there any weaknesses in the decision-making processes which led to that decision?**

**Yes there were.**

In reviewing the evidence available, primarily from committee reports and minutes I found:

- a focus on one option for the disposal of the land, without giving greater consideration to alternative options;
- issues around clarity in reporting – where reports to SRC did not fully set out all relevant considerations to enable members to reach an informed decision;
- an absence of detail in recorded minutes to evidence what, if any, additional information was presented orally;
- a number of occasions where Members had resolved that certain actions should be taken, but there was no subsequent evidence that these actions were carried out, or reporting back on outcomes.

I have been advised that a great deal of private debate and discussion was carried out by members and officers, and that oral updates were given regularly by officers, during a period of extended intense activity and high pressure decision-making. In the absence of evidence of that discussion and debate, and the weaknesses identified above, it is not possible for me to conclude that the decision-making process was sufficiently robust. However, based on the information presented to me today, I am satisfied that the outcome from that process is arguably a reasonable one.

**(3) Would/could any control weaknesses happen today?**

**The Council is a major land owner and will no doubt deal with major transactions in the future. Controls have and are being introduced to help to improve governance arrangements at the Council with positive outcomes. These improvements, when fully embedded and operational, should ensure that Council decision making processes are much improved. The Council is not yet free of allegations of poor governance, as evidenced and found by Internal Audit in its leisure services this year. However, its governance arrangements have responded robustly which is a positive sign for the future.**

I have expressed concern in past years that the Council's governance arrangements were not as robust as they should be. In particular, I issued a statutory recommendation as part of the 2003/04 Annual Audit Letter regarding the need to ensure that the Council has sufficient and appropriate long term access to legal advice, and that robust procedures are in place to evidence consideration and action by the Council based on that advice.

The Council has responded positively to that recommendation. All statutory officers have now been in post for some time, and the Monitoring Officer is currently up-dating the Constitution to ensure decision making processes are clear and transparent.

A review of our more recent audit work indicates a need in some areas to improve the quality of information presented to Members to help them to make as informed a decision as possible. Report recommendations include:

- Improve the quality and effectiveness of Council meetings by....achieving sharper and more accurate report writing;
- Address the barriers to effective challenge by ... improving informed decision-making....ensuring that vital information is made available at key stages of the decision-making process in the form of clear costed options and analysis, risk assessment and recommendations;
- The Use of Resources judgements carried out in the early part of this year and reported in the 2004/05 Annual Audit and Inspection Letter include reference to the need to ensure that ... the Council's asset base is appropriately managed including allocating member responsibility to the fixed asset portfolio ... the risk management system is developed further.

The Council is fully aware of the importance of seeking further improvement in these areas, but it is important that these issues are not taken out of context. Governance is improving across the Council, it now has a strong finance scrutiny committee, an increasingly effective audit committee and has brought in comprehensive internal audit coverage of its known risk areas. The recent commissioning of a due diligence review of Council Tax Collection is a very good example of a Council seeking robust decision-making.

I will continue to review the Council's progress in implementing our recommendations, and embedding the good practice that it has embraced. I would like to make 3 further recommendations as a result of this review:

- (1) The Council should implement and embed its new constitution and the related issues around the timeliness and quality of reporting to Members;
- (2) On the specific issue of the sale of land and property, in particular where there is any doubt or ambiguity about the proposed sale fee, an independent valuation should be sought on the same basis on which that asset is proposed to be sold;
- (3) Controls should be introduced to ensure that action is taken on all Member resolutions, with reporting back as necessary.

I look forward to the Council's response to these recommendations.

Based on the findings from my review I am now satisfied that there are no matters at this time which are sufficiently important to draw to the attention of the public as a matter of public interest.

Yours sincerely

A P Burns  
District Auditor

cc    Mark Luntley            Strategic Director  
       John Bull                 Audit Manager