Full Council

14 November 2017

Report of: Internal Audit

Title: Valuation Process Review – Sale of Port Freehold
(For Information – report referred to Full Council for information by the Audit Committee)

Ward: n/a

Member Presenting Report: Cllr Jos Clark – Chair of Audit Committee

Recommendation

To note the findings of the Internal Audit report "Valuation Process Review – Sale of Port Freehold."

Summary

A summary of the review , as reported to the Audit Committee in September 2017, is provided for information for members.

The significant issues in the report are:

1. Both valuations undertaken were in line with the Royal Institute of Chartered Surveyors (RICS) Red Book Guidance.

2. Both valuations undertaken took account of the elements that would be expected in the case of a 'special purchase' as in the additional worth to the Tenant should they own the freehold, and, as such, the valuations were considered appropriate.

3. As the valuations took into consideration the 'special purchaser' status of the Tenant and the offer of £10m was 38% higher than the top valuation, Ministerial Approval was not required or sought.

Policy

1. *N/A*

Consultation

2. **Internal**
SLT including S151 Officer, Cabinet Member for Governance, Resources and Finance.

3. **External**
N/A

Context

4. A concerned member of the electorate requested an independent review of the decision making process in respect of the sale of the freehold of the Port of Bristol.

5. In summary, the concerns raised were that the valuation process was not robust leading to the decision making process being flawed and that collectively the sale was illegal.

6. A summary of the findings is attached in Appendix A.

Proposal

7. The report is provided for information.

Other Options Considered

8. None

Risk Assessment

9. The work of Internal Audit minimises the risk of failures in the Council's internal control, risk management and governance arrangements, reduces fraud and other losses and increases the potential for prevention and detection of such issues. Areas of significant risk are detailed in the report.

Public Sector Equality Duties

10a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
- promote understanding.

10b) No Equality Impact anticipated from this report.

Legal and Resource Implications

Legal
N/A

Financial
(a) Revenue
N/A

(b) Capital
N/A

Land
N/A
Personnel
N/A

Appendices:
Appendix A – Summary of "Valuation Process Review – Sale of Port Freehold."

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers:

Cabinet	**- 03/03/15 (Item 6)**
Extraordinary Full Council	**- 02/06/15 (item 4)**
Cabinet	**- 16/06/15 (item 3)**

Appendix A

Summary of Valuation Process Review – Sale of Port Freehold

Background

The Tenant had held the leasehold on the land situated at the Port of Bristol (POB) since 1991, prior to which the POB was fully owned and operated by Bristol City Council (BCC). The leases that were sold to the Tenant were for 150 years at a peppercorn rent, and as such the income to the Council was not material.

Since the leasehold purchase, the Tenant had periodically expressed an interest in purchasing the freehold for the land on which the port is situated, in order to expand its business and open the POB up to larger ships/containers. Additionally, in the report to Cabinet in 2014, the stated benefits of a sale also included that the further expansion of the POB would bring additional prosperity to the Bristol region as a whole and not just to the Tenant and the POB.

In March 2012, the Tenant put forward an offer of £3.85m for the freehold, which was subsequently declined. Prior to the rejection, however, a valuation was commissioned by the Council's Property Division, with the 'Terms of Engagement' and subsequent Valuation report having been sent to the (then) Service Director of Finance/S151 Officer.

The valuation was provided based on both the 'Market Value' and the 'Worth' of the asset to a particular tenant, including considering the value the tenant may realise in the future should they gain the freehold.

Following the above offer from the Tenant not being accepted, a further offer was made in March 2014, after discussions between the Tenant and BCC which commenced in December 2013. The revised offer was for £10m.

As the previous valuation was commissioned two years previously, it was considered prudent to commission a further external valuation, initially from the valuer who provided the original valuation, but due to delays and the proposed level of liability, the Service Director: Property determined not to proceed, but to engage another valuer instead. The terms of the engagement required the valuer to value the POB on a 'Market Value' basis; however their final evaluation was based on the 'Marriage Value'. The cost of the valuation was £15,000.

Scope

A concerned member of the electorate requested an independent review of the decision making process in respect of the sale of the freehold of the Port of Bristol.

In summary, the concerns raised were that the valuation process was not robust leading to the decision making process being flawed and that collectively the sale was illegal.

Summary of Findings and Conclusions

Valuation Procurement Exercise for 2nd Valuation:

Procurement Regulations require that when the estimated cost of a contract is £15,000 or less one written quotation should be obtained before proceeding, this process was not followed in the case of the engagement of the 2nd Valuation, due to time constraints.

Valuation Methodology and Determination of Best Consideration

Both of the valuations were undertaken in line with the Royal Institute of Chartered Surveyors (RICS) -Red Book guidance, with both taking consideration of the benefits to the leaseholder should they obtain the freehold. It was the view of the Service Director: Property that this demonstrated that the valuers had taken account of the 'special purchaser' status of the Tenant. It is Internal Audit's view that the valuations took account of the elements that would be expected in the case of a 'special purchaser', as in the additional worth to the Tenant should they own the freehold, as such the valuations were considered appropriate.

Internal Audit was informed by the Service Director: Property that in the majority of asset sales, a 'Heads of Terms' is raised as part of the process, and while this document is not enforceable, it does provide a written record of what was agreed. A 'Heads of Terms' was not, however, raised for the sale of the POB, and as such there was no clear audit trail of the negotiation discussions and what was agreed.

Adherence to Legislative Requirements

As the valuations commissioned for the POB had, in the view of the Service Director: Property, taken into consideration the 'special purchaser' status of the Tenant, and the offer of £10m was 38% higher than the top valuation, Ministerial Approval was not required or sought.

Good Practice Identified

To ensure that the Council can demonstrate good governance in the sale of assets in the future and mitigate risks of reputational damage, the following good practice points were identified to be applied to any high value sale of Council Assets:

- Any offer received or solicited for Council assets should be formally recorded by way of a 'Heads of Terms', otherwise the Council is at risk of losing transparency in the sale transaction, as well as coming under scrutiny should the sale price be in dispute.

- Negotiations for significant financial transactions should be confirmed in writing, copying the correspondence to a second party in order to protect any one individual in terms of challenge, and to provide for backup in the event that the leading officer is not available.

- Formal records of negotiations should be maintained so there is a clear 'audit trail' of what has been discussed and agreed, who agreed it and when it was agreed. Documenting this process will allow the Council to demonstrate that best practice has been applied and that "best consideration' has been achieved. It will also aid the Council in the event of a challenge.

- Procurement regulations should always be followed, however where procurement regulations are not followed due to business need then the process followed and the reason for this should be documented and a waiver sought. Otherwise, the Council cannot demonstrate that it has achieved best value in the transaction.

The Good Practice identified will be followed up by Internal Audit in conjunction with the follow up to the Disposal of Assets review conducted in 2016/17.