

**APPEALS PANEL NO. 1**  
**MONDAY 5 OCTOBER 2015**

PRESENT: Councillors Earp (Chairman), Graham, and Harid.

OFFICERS: Principal Lawyer  
Director of Governance  
Director of Economic Development  
Strategic Property Manager

ALSO

PRESENT: Appellant  
Appellant's legal representative

**1. APPOINTMENT OF CHAIRMAN**

RESOLVED – That Councillor Earp be appointed as Chairman for the Municipal Year.

**2. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**3. DECLARATIONS OF INTEREST**

There were no declarations of interest in respect of the complaint.

**4. PUBLIC AND PRESS**

RESOLVED - That in accordance with Section 100A (4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

**5. COMPLAINT REGARDING THE SALE OF LAND AT ROSEHILL**

Consideration was given to a complaint regarding the sale of land at Rosehill.

The Chairman introduced the Panel and outlined the purpose of the meeting and procedure to be followed. He confirmed that all those present had seen the relevant documentation, copies of which had been circulated.

The Chairman asked the appellant and his legal representative to summarise the complaint as clearly as possible.

The appellant's legal representative referred to an email from his client on 29 June 2015, which posed five questions regarding the disposal of the land at Rosehill, he

proposed to address each of these to the Panel. The first question posed related to the sale process, and why this had not been undertaken through an open market competitive tendering process? The appellant acknowledged that the Executive had considered various approaches regarding the sale of the land in report ED.22/14 at its meeting on 18 August 2014, a copy of the report had been circulated to the Panel. The report identified options for selling the land but, it had not specified reasons for rejecting particular methods of disposal. In the appellant's opinion, this meant that the decision making process lacked transparency.

The appellant's legal representative noted the restrictive covenant on the land, referred to in the report. The appellant felt that the Council had reasonable grounds to challenge the covenant, as the report noted that the legal position in regard to it was not clear cut. By not challenging the covenant, the Council had not properly discharged its fiduciary duties as, had the Council successfully challenged the covenant, it may have been able to realise a greater financial return on the land.

The appellant believed that the method employed by the Council in the sale of the land was not in its best interests, and that a number of the terms relating to future use and development agreed in the sale of land would be unenforceable. In the appellant's view this meant the deal agreed by the Council would not provide the return it anticipated. The appellant's legal representative referred to the valuation report and related correspondence between the Council and its advisors. He felt that the advisors had questioned the decision to dispose of the land under the terms the Council had outlined to them.

A Member noted that the Council's lawyers had looked at the advantages of the proposed disposal, to which the appellant's legal representative responded that the advice was given to the Council following its agreement to dispose of the land. Referring to the original valuation report, the appellant's legal representative stated the view that the Council's lawyers had offered advice which would have protected the Council against entering into an agreement where some terms would be unenforceable, and which offered a lack of protection for the Council. However, the Council had not followed this advice, and on that basis, his client felt that the Council's decision making process had been flawed.

The appellant had submitted an initial offer to the Council for the land in June 2011, at that time, he had not been aware of the existence of the covenant. A second offer which took into account an existing restrictive covenant on the land was submitted in September 2011. The appellant questioned if the Executive had been made aware of his offer in the course of their processing the sale of the land.

The appellant stated that he had been advised by an officer of the Council in February 2012, that the asset was not at that time being considered for disposal, however, should it be agreed for disposal in the future, the Council would contact him to identify if there was any interest in making a proposal. The appellant's legal representative stated that at no time had his client been formally advised (i.e. in writing) that his offer for the land had been declined. The Principal Lawyer sought further clarification on precisely how the appellant had been advised that no further negotiations would take place between council officers and the appellant regarding a possible disposal of the land. The appellant stated that he had several telephone conversations with the Strategic Property Manager and the Property Services Manager in relation to his offer for the land, but at

no time had he been formally advised that his offer had been declined. The appellant raised concerns about a file note made on 2<sup>nd</sup> February 2012 which referred to his offer having been declined.

Additionally, the appellant commented that the disposal of the asset under the terms as he believed them to be, were tantamount to giving grant aid to the company at a level in excess of those permitted by European Union regulations, and therefore the Council had acted improperly.

In summing up the appellant's legal representative noted that there were two strands to his client's appeal; how the Officers of the Council had dealt with his client's case and, the decision making process in relation to the sale of the land.

A Member referred to an email from the Director of Governance to the appellant, in which he explained that the Council had disposed of the asset under "*best consideration reasonably available*". This meant that the Council was able to consider other factors such as ethical and commercial values, as a basis for a transaction, and that realising the maximum financial return was not always the central requirement for a Local Authority when disposing of an asset. The appellant's legal representative acknowledged that gaining best value was not always the central concern, however, his client believed that the decision making process relating to the sale of the land had been fundamentally flawed.

A Member asked if the appellant's plans for the site, including development of the frontage, and mark-up returns [Start-up Units] had been submitted in writing to the Council. The appellant's legal representative noted that there had been an issue meeting the deadline for requesting additional papers to be included in the documents circulated to members of the Panel prior to the meeting. He also noted that his client's personal computer had broken and he had consequently lost a great deal of his paperwork, however, much of the discussion of his offers for the land with Officers had taken place verbally. The Principal Lawyer stated that communication during the process was an issue that the Panel would give consideration to; he noted that the correspondence available to the Panel did not include references to the appellant's plans for the site.

The Panel thanked the appellant and his legal representative for their input. The Chairman advised the appellant that the Panel would discuss the complaint with the relevant Officers before considering the complaint in private and reaching a decision. The appellant would be informed, in writing by the Committee Clerk, within twenty working days of the Panel's decision, if the appellant was not satisfied with the Panel's decision the case could be referred to the Ombudsman.

The appellant and his legal representative left the meeting at 3.07 pm.

The Panel invited the Director of Governance, the Director of Economic Development and the Strategic Property Manager to the meeting.

At the request of the Chairman, the Director of Governance, outlined the process adopted by the Council regarding the sale of land. He explained direction was given to Officers that the sale of the land ought to address the Council's economic development priorities, and therefore the sale needed to offer more than a purely financial return.

When the party to which the asset was ultimately disposed approached the Council with their outline offer which included terms to develop the site and increase employment, this was subject to the same process of consideration as had been given to the appellant. The deal had been considered by the Director of Economic Development and the current Executive Members, to offer a number of economic benefits to Carlisle, and it was on this basis that an agreement was reached.

A Member asked if current Executive Members had been made aware of the offer by the appellant and discussions that had been held with him. The Director of Governance replied that current Executive Members were aware that other offers of significant sums, were made, but he could not be certain if names of individuals making offers were discussed. He added that Officers were always direct and honest with Members and sought to keep them fully apprised of all developments relating to the sale of the land.

The Director of Economic Development advised, in response to a comment from a Member that no reference to other offers were contained in the reports presented to the Panel, that the agreed disposal came some time after the offer from the appellant.

The Strategic Property Manager stated that the discussions with the appellant regarding his offers commenced in 2011. He added that the discussions with the appellant were of a preliminary nature and in no way constituted a formal offer. An email from the appellant to the Strategic Property Manager in September 2011 made reference to proceeding to a formal offer; this was not followed up by the appellant. The Strategic Property Manager had then advised the appellant in February 2012, that the land was no longer available for disposal and his offers were, therefore, declined. He had not received any further communication regarding the land from the appellant, until he initiated the complaints procedure on 25 June 2015

A Member asked how the appellant had been informed that his offer had been declined. The Strategic Property Manager responded that he had advised the appellant by telephone on 2 February 2012 and that this was recorded in the file note. A Member asked when the word "decline" had been recorded on the note. The Director of Governance replied that there was no reason to take any view other than that the note an accurate record of the discussion held with the appellant at the time the discussion took place.

A Member asked what details the appellant had provided regarding his own development plans for the land in his discussions with Officers. The Strategic Property Manager advised that the appellant's second offer for the land, which took into account the restrictive covenant made reference to plans for using the site as a car park only, no reference, was made to any other party being involved in the site development.

It was highlighted that the appellant had himself sought a level of exclusivity with the Council that was, to a large extent, central to his complaint over the manner in which the process had been dealt with.

The Panel thanked the Officers for their input and they left the hearing at 3.45 pm.

The Panel then considered the evidence that had been presented to them, prior to and during the hearing and:

RESOLVED – 1. That the complaint would not be upheld as the Panel believed that the Council and its Officers had carried out its duties in a legally compliant manner, that all matters had been dealt with fairly and that the correct procedures had been followed by Council Officers.

2. That the Panel recommends that the Officers check that protocols are in place for advising in writing to those making offers on saleable Council land.

[The meeting ended at 4.00 pm]