

STATES OF JERSEY

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HOWARD DAVIS FARM, TRINITY: PART OF FIELDS 562, 827 AND 828 – SALE OF LAND (P.68/2006) – COMMENTS

**Presented to the States on 8th August 2006
by the Public Accounts Committee**

STATES GREFFE

COMMENTS

Introduction

This proposition was lodged on 5th June 2006, and subsequently the States decided to refer the matter to the Public Accounts Committee (PAC) for consideration.

The Chairman and Vice-Chairman of the PAC, in conjunction with other States members, considered the projet and were concerned about the valuation of the Howard Davis Farm site. It was not clear that best value for money was being achieved for the Public.

Accordingly, the Chairman and Vice-Chairman brought draft terms of reference to the Public Accounts Committee at its meeting of 3rd July 2006, and these were considered and approved.

Terms of reference

The terms of reference of the Public Accounts Committee were to –

1. Determine whether the valuation of £750,000 for 7.5 vergées of land in an area designated as a “built up” area in the 2002 Island plan reflects current market value.
2. Consider the method used to determine the value.
3. Consider the cost implications involved including the relocation of the Animal Crematorium and the existing glasshouse.
4. Consider all other cost implications for the States of Jersey involved in the transaction including legal fees, etc.
5. Consider the conditions attached to the Contract of Sale including the option of re-purchasing the land at market value.
6. Determine overall return to the States.

Conclusions

- The PAC supports the dairy industry, and recognises that it is essential to Jersey’s cultural heritage. It recognises the need for the dairy to become more efficient and that significant efficiencies have already been made in a dairy industry that will never truly have an economy of scale.
- The PAC considers that if assistance needs to be provided to the dairy industry, it should be in a regulated, open format. It should not be in the form of preferential site provision.

Conclusions – Valuation

- Very few large commercial sites become available for sale and therefore one would expect to achieve an enhanced value for the site.
- No Open Market Valuations have been made and. no explanation has been given as to why the value differs so greatly from estimates for the Five Oaks site on a pro rata basis quoted in the minutes of the Economic Development Committee dated 2nd March 2004.
- The valuation is solely based on part of the site being used for a new Dairy and no comparison has been made with the other identified alternative uses.

- No detailed analysis has been carried out on the effects that the sale will have on the value of the remaining property at Howard Davis Farm.

Conclusions – Transaction

- No explanation is given as to why this will be a private treaty transaction.
- No specific restrictions or covenants will be placed on the land.
- There is a lack of clarity as to the responsibility for the Pet Crematorium relocation costs.

Conclusions – Contract of Sale

- Repurchase options need further clarification.
- There is no clear definition of “market value” in the discussion of the repurchase terms in the projet.
- If it is the intention of the States to sell the land at less than open market value, there should be a provision to allow the Public to repurchase the land at a value indexed-linked to the sale price.

Conclusions – Return to the States

- Little importance has been attributed to the calculation of the overall return to the States, as the return is to the proposed Howard Davis Trust fund. However the PAC considers that this should be reviewed as the States might be considered to be ‘constructive trustees’.

Key findings and questions raised by terms of reference

1. TO DETERMINE WHETHER THE VALUATION OF £750,000 FOR 7.5 VERGÉES OF LAND IN AN AREA DESIGNATED AS A “BUILT UP” AREA IN THE 2002 ISLAND PLAN REFLECTS CURRENT MARKET VALUE

Property Holdings have valued the site on the assumptions that –

- Three acceptable uses were possible: warehousing, light industrial, and Category B residential. The Property Holdings Department has noted that it would not be possible use this site for residential development at the current time, although this is by no means a situation that will continue indefinitely.
- The covenant on the land will be lifted.
- No restrictions or covenants would be placed on the site.
- The site to be sold measures 121,500 sq.ft. with a further 21,000 sq.ft. allowed for a new access road across countryside zoned. The valuation does not account for the 21,000 sq.ft. off access, however it is difficult to see how this site could have been developed without this access being provided, given the considerations of the Planning Department The PAC is aware of considerable sums that have been paid in order to secure access in certain other developments.
- Planning Permission was granted to Jersey Dairy on the 25th May 2006 and allows for a retail and visitor element on the site.

Although the land for the new access road will be included in the transaction, the existing access road to RJA&HS will remain in Public ownership.

It is stated in the projet that the valuation is at market rates, but the price negotiations indicated that the Jersey Dairy should be willing to pay over the valuation as the Public was prepared to consider entering into a private treaty with the JMMB rather than offering the property on the open market. This raises the question of whether this represents a true ‘arms-length’ transaction.

The Property Holding Department has responded to this suggestion, stating that –

“Unfortunately there is an error in the Report to P68 in the pre-penultimate paragraph it is stated that the purchase is ‘at a fair but fully commercial open market value ...’ It should read ‘at a fair and proper price’ ”.

No comparisons have been made with the JMMB site at Five Oaks which the Economic Development Committee had estimated in 2004 at an ‘existing use’ value of £5.1 million, and a value if sold for housing of up to £8 million ^[1]. The Five Oaks site is approximately twice the size of the Howard Davis Farm site.

The PAC is concerned that –

- No attempt has been made to assess the open market value of the land.
- There are no valuations of the land for the other uses defined.
- No explanation is given as to why this will be a private treaty transaction.
- No restrictions or covenants will be placed on the land.
- Insufficient account has been taken of the JMMB being a ‘special purchaser’, although it has been treated as such.

2. CONSIDER METHOD USED TO DETERMINE THE VALUE

The cost of the land has been assessed by the residual value method of calculation. This requires the calculation of the rental value of the completed development, capitalising the rental to establish the gross development value at that rental income, and then subtracting the building development costs.

This particular method is the “land residual” method of valuation. This technique “is used to check on the reasonableness of an asking price for a plot that is the contemplated site for a new income producing building” ^[2]. Furthermore, “the appraiser re-enacts the thinking of the builder ^[3]”. The reference and the Red Book ^[4] both state that this method is sensitive to the assumptions made. For example, it is possible that, since this is a low risk transaction, the capitalisation rate should reflect this.

According to the rules of the Royal Institution of Chartered Surveyors (RICS) in their ‘Red Book’, (which determines rules for standard valuation methods) –

*‘The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a **willing seller** in an arm’s-length transaction **after proper marketing** wherein the parties had each acted knowledgeably, prudently and without compulsion ^[5].’*

According to the Red Book rules, the willing seller is –

*‘motivated to sell the property at market terms for **the best price attainable in the (open) market after proper marketing, whatever that price may be**. The factual circumstances of the actual property owner are not a part of this consideration because the ‘willing seller’ is a hypothetical owner ^[6].’*

And ‘proper marketing’ means that –

'the property would be exposed to the market in the most appropriate manner to effect its disposal at the best price reasonably obtainable in accordance with the Market Value definition. The length of exposure time may vary with market conditions, but must be sufficient to allow the property to be brought to the attention of an adequate number of potential purchasers. The exposure period occurs prior to the valuation date^[7].'

This contrasts with a 'forced sale', about which the Red Book says –

The fact that a sale is 'forced' means that the vendor is subject to external legal or commercial factors, and therefore the time constraint is not merely a preference of the vendor... Any relationship between the price achievable on a forced sale and the Market Value is coincidental; it is not a valuation that can be determined in advance^[8].

The Red Book also states that " . the actual use of the property may be so special that it may prove impossible to categorize it in general market terms. In such cases the land should be valued, assuming the benefit of planning permission for development for a use, or a range of uses, prevailing in the vicinity of the actual site."

The PAC considers that the fact that the site has at no point been exposed to the market indicates that the States has not sought full open market value. Furthermore, as market exposure is a condition of being a willing seller, and the valuation assumes that the Public is such a seller, the underlying assumptions on which the valuation has been made could be questioned.

Although in this case the Public is selling by private treaty, other options appear not to have been explored. The PAC has seen no evidence that any attempt had been made to get an open market valuation for this site. It considers that it would be prudent for this to be the case whatever the transaction.

The PAC has the following concerns –

- The use of a private treaty suggests that this is not an arms-length transaction.
- The PAC has received no evidence that sensitivity analysis has been applied to the calculations
- The States has not sought open market valuations.
- No valuations have been calculated for the alternative uses of the site.
- No account has been taken of the fact that the sale of the land represents a significant reduction in the amount of land attached to Howard Davis Farm, which may have a detrimental effect on the value of that property.

3. CONSIDER THE COST IMPLICATIONS INVOLVED INCLUDING THE RELOCATION OF THE ANIMAL CREMATORIUM AND THE EXISTING GLASSHOUSE

The development will require the relocation or removal of –

- 3 glasshouses of an area totalling approximately 19,482 ft.²
- 4 polytunnels of an area totalling approximately 20,559 ft.²
- A storage shed of an area totalling approximately 4,736 ft.², housing a computer control unit, refrigerated cooler rooms, standby electricity generator, two oil fired greenhouse boilers and other ancillary equipment. All equipment is in good working order.
- A water storage reservoir.

- Associated ancillary facilities for all of the above.
- The Pet Crematorium, owned by the JSPCA.

The details of who is to fund the relocation of these items is not clear in the projet, and the PAC is aware of conflicting understandings between parties as to those details.

The computer control unit and boiler referred to above are central to the ventilation control and heating of glasshouses sited at Howard Davis Farm including the glass house complex that is not situated on the land to be sold and which will remain in public ownership. Although it is suggested that there is no current call for these facilities, the PAC is concerned that future uses have not been considered. There is no clear costing for the re-use and/or sale of equipment.

The valuation states that the valuers “have not carried out a structural survey of the property, nor tested any services or other plant of machinery.” Representatives of the PAC have visited the site and question the statement that “the facilities are ageing”. There is also a question as to why the facilities are presently underused, particularly in view of the various policies adopted by the States, but these are not within the remit of the PAC. The PAC notes that Property Holdings is of the opinion that there is no need for a structural survey.

There are cost implications to the JSPCA inherent in this relocation, as the pet crematorium provides that organisation with an income stream of approximately £70,000 per year. The JSPCA has not indicated that it is satisfied with the options for relocation discussed so far. The Property Holdings Department have been advised by the Transport and Technical Services Department that the pet crematorium is obsolete. This is refuted by the JSPCA, who have stated that the equipment therein has been recently updated at considerable cost.

There is no current formal agreement between the JSPCA and the States in respect of the pet crematorium. There are cost implications inherent in the relocation. Whilst not central to the report, the PAC considers that this lack of formal agreement raises issues that Property Holdings will no doubt wish to investigate.

The PAC is concerned that –

- Funding of the pet crematorium relocation requires clarification, and alternative provision must be made.
- The facilities to be demolished are of a serviceable standard.
- A number of costs remain unquantifiable, including the relocation of an area of glasshouses used by the Philip Maurant Centre, the relocation of facilities including the pump house, boiler room and diesel tank, and the rerouting, replacement or relocation of any and all existing services the run through the proposed dairy site.

The PAC understands that, apart from the pet crematorium, the responsibility for removal and relocation costs rests with the dairy. However, as the price for the site is the residual value after deduction of the amount that it will cost to construct the new dairy, and the construction process necessitates the removal of these items, the public has effectively lowered the price of the site by the amount that the dairy will be expending to relocate these items. This places the burden of relocation firmly on the States.

The specific pet incinerator costs to be met by the public will be deducted from the sale proceeds.

4. CONSIDER ALL OTHER COST IMPLICATIONS FOR THE STATES OF JERSEY INVOLVED IN THE TRANSACTION INCLUDING LEGAL FEES ETC.

The PAC notes that the legal advice costs are all in house, and therefore cannot be quantified separately.

The PAC considers the following areas to be of concern in respect of possible costs –

- The effect that this sale will have on the value of the remaining site.
- The internal costs of funding a legal challenge to the removal of the covenant are unknown.

5. CONSIDER THE CONDITIONS ATTACHED TO THE CONTRACT OF SALE INCLUDING THE OPTION OF RE-PURCHASING THE LAND AT MARKET VALUE

The report to the projet refers to a possible future repurchase of the site by the Public at ‘market value’, the exact definition of which is not clearly defined. The Public is being asked to sell the site at residual value, and will have an option to repurchase only at an undefined market value.

The value of building land can be affected by conditions included in the Contract of Sale. This is dependant on eventual planning permission and on future opportunities to maximise the potential of the site. The PAC currently has had no opportunity to look at the contract of sale and therefore finds it difficult to comment. However it should be noted that this site is in a designated built up area and therefore it is conceivable that the future use could include some form of residential development.

The PAC is concerned that while the JMMB’s current Five Oaks site is has been valued by the Economic Development Committee in 2004 at an ‘existing use’ value of £5.1 million, and a value of sold for housing of up to £8 million⁹¹.

In the future, the JMMB may seek to sell the site for whatever reason. The Public would be in a position of ‘first refusal’, and could purchase the site at market value. Any increase of value in the site, when realised by the sale, would thereby accrue to the JMMB whether the States repurchased the land or not. The PAC considers that if it is the intention of the States to sell the land at less than open market value, it would be preferable to include in the contract of sale a provision to allow the Public to repurchase the land at a value indexed-linked to the sale price.

The PAC has noted that the contract of sale is not available to be studied. It is of the opinion that this conditions contained within this document will be of the utmost importance in respect of the sale value and repurchase price and that a draft should be prepared for the States to consider.

The PAC is concerned that –

- There is no clear definition of “market value” in the discussion of the repurchase terms in the projet.
- If it is the intention of the States to sell the land at less than open market value, then there should be a provision to allow the Public to repurchase the land at a value indexed-linked to the sale price.

6. DETERMINE OVERALL RETURN TO THE STATES

The PAC has been unable to determine the overall return as some of the costs related to the sale are unquantified. It is suggested that this exercise is carried out and that the overall benefit/return to the States is stated in any revised proposition.

The Property Holdings Department attributes little importance to this, as the return is to the proposed Howard Davis Trust fund. However the PAC considers that this is even more important as the States might be considered to be ‘constructive trustees’.

7. EVIDENCE AND METHODOLOGY

This was a strictly time-limited review, and so no public hearings were held. Evidence was gathered from files and from submissions and interviews with stakeholders.

The Committee gathered all relevant minutes of meetings between the JMMB and the Economic Development Committee, and all meetings between the dairy and the Environment and Public Services Committee.

The formal valuation and all background documents, especially those concerned with the deductions due to work required.

The Committee met with the valuer and officers of Property Holdings to discuss the sale and intended relocation of functions.

The Committee sought submissions from the relevant officers of the Planning and Environment Department, the Transport and Technical Services Department, and the Education, Sport and Culture Department.

The Committee also sought the opinion of the JSPCA on the relocation of their pet crematorium.

The Committee made use of the expertise of its non-States members who examined the land valuation and matters concerning the relocation of functions under its usual strict confidentiality.

[1] EDC Act B1 of 2nd March 2004.

[2] Real Estate Appraisal and Investment Kahn, Case & Saunders.

[3] Real Estate Appraisal and Investment Kahn, Case & Saunders.

[4] 'Appraisal and valuation standards' – 5th edition.

[5] Section PS 3.2 of the BICS Red Book.

[6] Section PS 3.2.5 of the BICS Red Book.

[7] Section PS 3.2.7 of the BICS Red Book.

[8] Section PS 2.4.4 of the BICS Red Book.

[9] EDC Act B1 of 2nd March 2004.