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Corporate Services Scrutiny Panel Report

Review of the proposed sale of the former Jersey College for Girls site

Presented to the States on 22nd May 2007

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Executive Summary

The review has identified a series of failings in the methods used to come to the present arrangement with the preferred developer together with serious questions regarding the structure and value of the current proposed terms as set out in the draft 'heads of term' document examined by the Sub Panel.

The Sub Panel has been advised that the proposed terms may represent an agreement which carries with it a degree of risk and uncertainty inappropriate in the case of a disposal of a valuable asset.

The Sub Panel notes that, at the time of writing these terms are far from settled.

There is no evidence to suggest that all parties have proceeded in anything other than good faith but the Sub Panel is concerned at the lack of direction which has characterised the process to date.

Recommendations

Accordingly the Sub Panel

1. endorses the recommendations contained in the adviser's report regarding the process for future property disposals.

2. recommends that the Minister reconsider the financial aspects of the proposed development agreement with Grange Developments Limited.

3. recommends that the Minister obtains an up to date open market valuation of the site with the benefit of the existing planning consent to establish whether the offer currently being made by Grange Developments Limited is one that he can proceed with.

4. recommends that the Privileges and Procedures Committee review the effect of Standing Order 168(3) regarding ministerial approval of land transactions.

Introduction

1. The Corporate Services Panel agreed to establish a Sub Panel to investigate the proposed sale of the former Jersey College for Girls (JCG) site following a debate in the States on 28th March 2007 on proposition P.30/2007 of Deputy R. Duhamel.

2. The Sub Panel was constituted as follows: Constable D.J. Murphy (Chairman), Senator L. Norman and Deputy C.H. Egré. Officer support was provided by Mr. M. Haden and Miss S. Power.

3. The Sub Panel agreed the following terms of reference:

   To determine whether the tender, selection and sale process used by the Minister for Treasury and Resources was open, fair and appropriate.

   To determine whether the proposed sale represents good and fair value for the people of Jersey.

   To examine any further issues related to the proposed sale which may arise in the course of the Scrutiny review that the Panel considers relevant.

4. The Sub Panel appointed Mr R. E. H. Wragg, FRICS, a resident of the Bailiwick of Guernsey to assist and advise it in the review. Mr. Wragg runs a successful Property Development and Investment Company with a substantial portfolio of blue chip properties.

5. The Sub Panel received a copy of all the papers contained in the Property Holdings Department file relating to the proposed sale up to 22nd March 2007, including commercially sensitive details which would be inappropriate to release into the public domain. In addition the Sub Panel received a copy of the Drivers Jonas evaluation of the proposed development of the property, dated 20th April 2007, commissioned in February 2007.

6. In accordance with Regulation 3(1)(c) of the States of Jersey (Powers, Privileges and Immunities)(Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006, the Sub Panel agreed to treat these papers as confidential and to conduct its hearings in private session.

7. This report sets out the conclusions the Sub Panel has drawn from its review based on its study of the documents and its questioning of witnesses. The details of the evidence it has considered must remain confidential in accordance with the agreement referred to in paragraph 6 above. In presenting this report to the States the Sub Panel hopes to assist the Minister in responding to part (a) of Deputy Duhamel's proposition P.30/2007 which requires him to present to the States assembly the documentation he has relied upon to establish the value of the former JCG site.

Methodology

8. After a thorough study of the documentation provided, the Sub Panel invited each of the four property developers, including Grange Developments Limited, who were shortlisted in the selection process in August - October 2005 to attend a confidential hearing to discuss information relating to the above terms of reference. All four attended a hearing on 26th April 2007.

9. In addition, the Sub Panel invited four other property developers who had expressed their interest in the site to Deputy R. Duhamel in February and March 2007. Of these only one accepted the invitation to attend.

10. The Sub Panel also invited all States members with relevant information to attend a hearing. This invitation was accepted by Deputy R. Duhamel, Senator B. Shenton and Constable A.S. Crowcroft.

11. The Sub Panel held a confidential hearing on 30th April 2007 with the Treasury and Resources Minister accompanied by officers of the Property Holdings Department Messrs. E. Le Ruez (Chief Executive), P. Tucker (Director) and R. Foster (Assistant Director - Finance and Strategy.

12. The Sub Panel also met Senator P. Ozouf, (President of the Environment and Public Services Committee at the time of the selection process for a preferred bidder for the site) and subsequently Mr. R. Williamson, Principal Planner (responsible for preparing the development brief for the site).

13. The Sub Panel considered and endorsed the report and recommendations of its adviser at its meeting on 8th May 2007. (The adviser's report is attached as an appendix to this Interim Report.) The Sub Panel believes that the adviser's report sets out in a fair and measured manner a professional and balanced view of the proposed sale agreement.

14. This report was approved by the Sub Panel following discussion with the Minister on 15th May 2007.

Terms of Reference

Was the tender, selection and sale process used by the Minister for Treasury and Resources open, fair and appropriate?

15. The Sub Panel notes that the selection process for identifying a preferred developer was initiated during the period of office of the former Environment and Public Services Committee which came to an end with the change to Ministerial Government in December 2005. The decision to appoint a preferred developer therefore was the responsibility of the President of that Committee and not of the Minister for Treasury and Resources who assumed responsibility subsequently only for the agreement of the sale process.

16. The decision to appoint the preferred developer, Grange Developments Limited, was taken at a time when responsibility for such decisions had been delegated to the President alone while other Committee members were engaged in the election process. The President made it clear to the Sub Panel that he was keen to dispose of a property which had lain idle and vandalised for a considerable period of time. The approach of a plausible developer with a definite interest in the site appears to have been welcomed with some relief.

17. The Sub Panel also notes that there was in fact no 'tender' process as such. It was agreed instead to seek expressions of interest from developers. This decision was taken, quite rightly in the interests of accountability and transparency, after Grange had come forward with some enthusiasm for the project.

18. The decision not to market the site in the United Kingdom has been widely criticised. The Sub Panel believes that this was a legitimate political decision to take in terms of promoting local building firms. However, in terms of achieving best value from the sale the decision was possibly unnecessarily limiting.

19. It appears clear to the Sub Panel that Grange was in a strong position in comparison with its competitors for appointment as preferred developer as, by the time the four developers were asked to make presentations of their scheme, Grange had developed more detailed proposals making a bold use of the opportunities on the site. There is no evidence that Grange was shown any partiality in achieving this pre-eminence; however, it seems clear that several factors contributed towards a certain lack of clarity in the other shortlisted schemes. These factors included principally a limited development brief focussed on planning issues but without strong guidelines and a lack of clearly defined criteria, including financial considerations, against which the various schemes were to be assessed.

20. Given their initial enthusiasm for the project and the head start they had gained it is unsurprising that Grange was selected as the preferred developer in October 2005. The Sub Panel believes strongly that a second stage presentation should have been introduced to allow selected developers to refine their schemes and to respond to comments from the selection panel. This would have allowed a more equal appraisal of

the schemes against a consistent framework including the value for money elements which appear to have been underplayed in the initial schemes.

21. The Sub Panel notes that Grange was asked to submit an estimated valuation for the site only after the presentations had been made in October 2005. Their valuation of £2.25m for a straightforward purchase or £2.5m payable on receipt of practical completion of the entire project was challenged by the President of the Environment and Public Services Committee who believed that more value should be achieved from the site - '*up to around £3m'*. However, it is unclear from the file on what basis any of these estimations were made. It appears from the file that the decision to explore 'staged payments' or the possible 'payment of an agreed price at the end of the development' was born at this juncture as a way of extracting more value. The Sub Panel believes that, while the intention might have been laudable, the basis for agreeing value on the site was too vague and undefined.

22. The Sub Panel is concerned to note that upon initial selection of Grange as the preferred developer there appeared to be only a cursory element of due diligence carried out on the company, namely a letter from the bank confirming that the company was sound. It was advised, however, by the Minister that he was satisfied that the bank reference was adequate for the initial stages and that it was always the intention to undertake a higher level of enquiry before signing the final contract.

23. The point which the Sub Panel has found most disconcerting in the process was the failure of the Director of Property Services to follow a suggestion from the President of the Environment and Public Services, when confirming the appointment of Grange as preferred developer on 4th November 2005, to engage a consultant to provide professional assistance throughout the negotiations with Grange. The Director gave the following explanation:

> *As a result of that meeting with the President, Drivers Jonas were consulted on this particular scheme in late November/early December 2005 when the appointment of Grange Developments as the preferred developer was discussed with them. Whilst Drivers Jonas were pleased to help, they were conscious that*
>
> *A) Grange had already been appointed as preferred developer*
> *B) The offer was wholly conditional on achieving planning permission*
> *C) That process could take up to 18 months with risk that permission is not given*
> *D) The President wished to achieve £3m*
>
> *DJ suggested that if a preferred developer had not been appointed they would have progressed to 'soft market test' the opportunity with a few niche UK developers, but in the circumstances they were of the opinion that negotiation would be dependant on planning approval having been obtained. Any increase in value would come from what Planning would be prepared to approve. In further discussions it was agreed with DJ that they did not have a role to play in the negotiations with the Planning Minister or the officers at Planning and any assistance that they might be able to give be deferred until the preparation of the development agreement. In the event, planning approval was not received until nearly 12 months later.*

24. The Sub Panel was informed by the Director of Property Services that '*informal discussion has taken place with various surveyors at Drivers Jonas and they were kept*

informed and aware of progress and have given advice when requested'. The opportunity was taken during visits/meetings with Drivers Jonas surveyors engaged on other asset valuation work being undertaken for the Department. However, the Sub Panel has not been provided with any record or notes of advice that was given during the period between November 2005, when the President made his suggestion, and February 2007 when Drivers Jonas was formally instructed to carry out an evaluation.

25. The Sub Panel was advised by its adviser that development agreements of the nature which was being proposed for the sale of the former JCG site require careful and detailed treatment. There is no evidence that anyone in Property Services at that time had any previous experience of such arrangements. Nor would it be reasonable to expect such experience to be in place in the department as structured at that time.

26. Consequently, the fact that external assistance was not engaged in the early stages and that the implementation of the President's suggestion was not subsequently monitored, appears to be a significant failing at both political and management level. Firstly, the President should have ensured his "suggestion" was taken on board and secondly the new Minister should have been more proactive in reviewing the value of the site and the process which had endured up to his takeover.

27. The Sub Panel acknowledges that the failing identified above may be understood in the context of the major political and managerial changes undergone at the time in question due to the change to ministerial government and the transfer of responsibility for Property Services to the Treasury and Resources Department. Nevertheless, the Sub Panel believes that the absence of ongoing formal professional advice is critical to the States position in the current proposed arrangement.

28. The Sub Panel noted from the file that the Treasury and Resources Minister was briefed in an e-mail by the Director of Property Holdings in August 2006 about the selection of Grange as a partner in developing a viable scheme for the JCG site. This was at a time when further planning requirements were being discussed with the Minister for Planning and Environment. The Minister replied that he '*remained committed to working with Grange to achieve a satisfactory outcome without more delay*' and said that he had written privately to Senator Cohen to express his concerns. There is no other record in the file of ministerial oversight of the project until early in 2007 when a development pack was prepared for him in order for a ministerial decision to be made on the development proposals.

29. The Sub Panel was surprised to learn that a formal independent appraisal of the Grange development scheme by Drivers Jonas was not commissioned until 22nd February 2007 (delivered to Property Holdings on 20th April 2007). The Sub Panel notes that this instruction was only after Deputy Duhamel had questioned the valuation of the site in his letter dated 6th January 2007 to the Minister (quoted in full in P.30/2007) and after the in-principle ministerial decision had already been taken to approve the development proposals for the JCG site (16th February 2007).

30. It appears then to the Sub Panel that this appraisal may have been requested in reaction to the criticisms being made by Deputy Duhamel and in order to cover the position already taken by the Minister.

31. The Sub Panel does not believe that the Drivers Jonas appraisal represents an adequate

full market appraisal based on up to date research but appears to have been based solely on information provided by Property Holdings.

32. The Sub Panel investigated the possibility of commissioning its own independent market valuation but found that the cost was prohibitive in terms of its own limited budget.

33. In the light of the above, the Sub Panel fully endorses the nine recommendations, contained in its adviser report, on the methods to be applied to future property disposals.

34. The Sub Panel notes that Property Holdings already appears to be developing a more coherent approach to property disposal as evidenced in a letter dated 20th April 2007 addressed to the Chairman, Public Accounts Committee, from the Director of Property Holdings. The Sub Panel trusts that its adviser's recommendations will be helpful in promoting a more robust approach in future disposals of significant States properties.

Does the proposed sale represent good and fair value for the people of Jersey?

35. As previously discussed, in our view, the project has suffered seriously from the lack of professional guidance in property development. We believe that this left the Property Holdings Department in a weakened position in the formation of a development agreement with Grange.

36. In his report the Sub Panel's adviser points out that, as no final agreement has been reached with the developer it is not possible to comment upon whether it represents good and fair value. His comments deal with the proposed terms as set out in the draft heads of terms document which was made available to the Sub Panel and on this he expresses serious reservations. He states: '*I believe they represent a degree of risk and uncertainty inappropriate in the case of a disposal of a valuable asset*'. He goes on to comment on the description of the proposed special purpose vehicle, as set out in evidence from Grange Developments Limited and says: '*In my experience of development, I would have to point out that such a structure as the one set out by Grange would be at the very least unusual and certainly not a preferred choice for a landowner unless there was no other way of disposal available*'.

37. In our view these reservations bring into question the claims made in the States debate on P.30/2007 that there was no risk to the States. We do not believe that we need to add any further comment, except to reiterate our view that the root of the problems lies in the lack of direction which characterised the selection process and the lack of professional advice, as discussed above.

38. We believe strongly that a reconsideration of the financial aspects of the proposed development agreement must be undertaken.

39. Much emphasis was laid in the States debate on P.30/2007 on the reputational damage to the States should the Minister decide to revoke this decision to approve the current development proposal. Notwithstanding these claims, we believe that a renegotiation of the proposed development agreement will enhance the States reputation as a responsible property owner making effective use of its portfolio. The States Strategic Plan sets out 'how Property Holdings intends to work towards delivering the extraction of optimum benefit from property assets'. Not to reconsider the financial arrangements in this deal, despite the identified risks and uncertainties, would appear to undermine this claim.

40. The Sub Panel makes no criticism of the way the developer has approached this deal. We are conscious that Grange will be disappointed, quite naturally, by the Sub Panel's recommendation and the consequential costs of any further delay in finalising the agreement. Nevertheless the improving market conditions would suggest that further value may yet be obtained from the site which may still mean that the developer may still feel able to achieve a worthwhile return on a renegotiated arrangement.

41. The Sub Panel therefore strongly urges the Minister to obtain a new open market valuation of the site with the benefit of the existing planning consent before any further negotiation of the proposed sale.

42. For the avoidance of doubt, the Sub Panel recommends that the valuation be carried out independently which would preclude the involvement of Drivas Jonas. The instruction should be in a precise form to ensure the valuation relates to a sensibly structured deal acceptable in the open market; the value should show what someone would pay for a straight purchase and should only then consider a deal containing overage payments.

Further issues

43. The Sub Panel notes that no binding agreement between the parties is in place until such time as a contract has been passed in the Royal Court.

44. The States has entered into an arrangement to underwrite the developer's costs up to a limit of £150,000 in the event that an agreement with the States is not reached. However, neither the developer nor the States appear to have achieved a secure position.

45. The Sub Panel's adviser said that he would have expected the developer to secure his position by either some form of conditional contract which allowed for a pricing structure for what was eventually obtained in the planning consent or at the very least a lock out agreement to give the developer a chance to explore what could be achieved.

46. The Sub Panel notes that this underwriting agreement provides no benefit to the States. The States would not acquire in return the ownership of the intellectual rights to the proposed scheme should the States decide not to progress Grange Developments Limited.

47. The Sub Panel believes that further clarity about such arrangements ought to have been achieved to protect the interests of the States and the developer in the, not unusual, event of changing circumstances leading to reconsideration of draft agreements.

48. The Sub Panel is conscious that the debate surrounding the sale of the former JCG site has raised serious questions regarding the rationale for Standing Order 168(3) which requires the Minister for Treasury and Resources simply to notify the States at least 15 working days before making any binding arrangement that he has taken a decision regarding a land transaction on the advice of a body such as property Holdings. The issue is whether States members should retain the right to question and debate the Minister's decision.

49. The Sub Panel accordingly recommends that the effect of Standing Order 168(3) should be reviewed by the Privileges and Procedures Committee. .

50. This Report was endorsed by the Corporate Services Panel on 17th May 2007

Appendix:

Report to the Corporate Services Scrutiny Sub Panel by Mr. R.E.H. Wragg, FRICS

Appendix

Report to the Corporate Services Scrutiny Sub-Panel regarding the Proposed Sale of the Former Jersey College for Girls Site

The Corporate Services Scrutiny Sub-Panel has been convened to review the proposed sale of the former Jersey College for Girls [JCG] to determine whether the tender selection and sale process has been open, fair and appropriate and also to determine whether the proposed sale represents good and fair value for the people of Jersey. In addition, the scope of the review requires the Sub-Panel to examine further issues related to the proposed sale which may arise in the course of the scrutiny review.

I, Robert Edgar Harding Wragg, being a Fellow of the Royal Institution of Chartered Surveyors and a resident of the Bailiwick of Guernsey, have been appointed to assist and advise the Panel in their review. It is my intention in this report to provide my considered opinion of the review that has now been completed in accordance with the terms of reference.

Key Milestones

I shall not refer in detail to the history of the proposed sale as this has been dealt with through the many documents provided to the Sub-Panel but in order to provide my advice it is important to have in mind a number of key milestones during the period of the proposed transaction to date.

Mr Paul Tucker, Director of Property Services Department, has described to the Sub-Panel that the process of the disposal of JCG began in 2004 when he was instructed to establish what could be done with the site. During 2004 and in early 2005 he approached a number of developers and architects to establish whether any were interested in pursuing a scheme and if so, what sort of scheme they would consider to be appropriate for the site.

In 2005 one of the parties approached, Grange Developments Limited, prepared a proposal which led to the presentation of a scheme in June 2005 to a group of senior officers.

In August 2005 the property was advertised in the Jersey Evening Post with requests for expressions of interest which led to four submissions presented in October 2005 to a panel of different officers, from which in November 2005 Grange Developments Limited emerged as the preferred developer.

In October 2006 planning permission was granted for a scheme submitted by Grange Developments Limited and the permit was issued in November 2006.

In February 2007 an in principle agreement was reached with Grange Developments for the purchase of the JCG site.

Has the Tender Selection and Sale Process been open, fair and appropriate?

1. **Openness**

It is clear from the evidence provided by the Director of the Property Services Department, that the JCG site was not a straightforward development proposal. It had a number of constraints which ranged from its designation as an SSI to the refusal of previous planning applications for development on a residential basis. The building itself had been allowed to fall into a state of disrepair and parts of the site remained occupied for educational/social purposes. The lawned area to the front of the building could not be developed and the site itself was split level. Whilst none of these factors make it impossible to redevelop, it clearly requires a developer who can bring relevant past experience to bear to enable the objectives of the States to be achieved whilst producing a development which optimises value. It is my opinion that it would not be unreasonable for a Director of Property Services to discuss the site on an informal basis with developers who he felt could bring such expertise to bear. The Director has stated that with the exception of Grange Developments, no-one that he approached at that stage expressed any interest in the site. Grange Developments on the other hand were both enthusiastic and prepared to examine the opportunity in some detail. There is a danger that when only one party expresses an interest the question of openness becomes clouded. However, the decision to then advertise the opportunity to the public counters that concern. There is a criticism that the opportunity was only advertised within Jersey and not to a wider audience in the UK and elsewhere. There is also a concern that the advert appeared in the middle of August, which is of course the peak holiday time. The decision not to advertise more widely and the timing of the advertisement may have had an effect on the number of expressions of interest. Ultimately four parties made submissions on a variety of bases.

2. **Fairness**

During interviews with each of those parties who submitted proposals, there were some who felt that the information provided during the submission process was not on a level playing field for all but equally there were others who expressed the view that they thought it was a fair process. In this respect I have found that the package of information issued to the parties was not as helpful as it could have been in directing the developers in their consideration of the site. Planning matters clearly took precedence over other considerations but the brief itself gave no strong guidelines and I think it is for this reason that the submissions varied so widely. Clearly, Grange Developments, because of the initiative they showed earlier in the year were able to present a well thought out and detailed proposal. However, it was open to all parties to pursue their own investigations, have discussions with the Planning Authority and ask for information if they felt they had not got it. In the absence of any solid evidence to suggest that the parties were provided with disparate information it is the responsibility of every developer to establish all the information they require for submission and if any felt that there were vague areas then these should have been flagged up at the time. It is my opinion, therefore, that up to the time the schemes were presented the matter had been dealt with fairly.

The submissions which were made have been described as expressions of interest. They were presented by each party to a panel of States Officers representing Housing, Property Services, Planning

and Treasury and Resources. From the information that I have seen and the evidence given during the hearings, it is clear that there was no universally adopted criteria by the panel to determine which of the developers should be chosen. There have been references in the hearings to planning being one of the major considerations but equally there have been references to the financial aspects being of relevance. Where a panel convenes to consider such proposals it would be normal and prudent to have a pre-agreed list of criteria against which the submissions are to be judged. No such list of criteria has been presented to the Scrutiny Sub-Panel and it would appear, therefore, that the judging of the schemes was on a rather ad hoc basis. At the time of the consideration of the schemes and prior to proceeding to the preferred developer stage, it would be reasonable to expect an analysis of each of the submissions based upon criteria adopted for decision making. If one such criteria is to be the value for money criteria combined with deliverability of the scheme, then it would be reasonable to expect an element of due diligence to be carried out with each of the parties. It was confirmed that no such due diligence has taken place either then or during the process leading up to the current situation.

3. **Appropriateness**

In moving Grange to the preferred developer status it would be reasonable for a developer to expect some form of agreement with the States which sets out the basis upon which the developer is to proceed. The developer at this point is clearly going to incur cost and needs to be satisfied that his position is protected should he find himself in a position of being able to deliver the scheme as proposed. That is not to say that there should be a final binding agreement on value but at the very least there would be an agreement which should provide a formula that enabled a contract to be entered into. The agreement could take a number of forms. It could be a conditional contract or it could be a lock out agreement or if the States wished to pursue a joint venture agreement then it could be such an agreement. No formal agreement has been disclosed and I do not believe one exists. There are references to the States agreeing to underwrite the developer's costs up to £150,000 but there is no legal document that confirms that either.

The appointment of Grange as the preferred developer does in my opinion appear to have been a step taken prematurely without having considered all of the schemes on a like for like basis. I therefore consider that the deliberation process and the appointment of Grange as preferred developer at the stage that it was done without the appropriate due diligence having taken place was not in accordance with normal practice and therefore in inappropriate way of dealing with this stage.

Does the proposed sale represent good and fair value for the people of Jersey ?

In the file of information provided there are various documents referred to as "Heads of Terms re Purchase of Jersey College for Girls Site by Grange Developments Limited from the States of Jersey".

During the hearing with the Treasury and Resources Minister and the Director of Property Services, it was clearly stated that no final agreement had been reached with the developer and it is therefore not possible to comment upon whether it represents good and fair value. I have been asked to comment upon the proposed terms as set out in the heads of terms document.

In essence the terms as set down provide for the sale of the JCG site to a subsidiary company of Grange Developments Limited newly incorporated for the purposes of this development and the consideration shall be for a nominal sum upon the transfer of the land by the States with a further £1.8 million payable at a specified later date with the further provision for an overage payment should aggregate sales achieve certain trigger values. During the hearing with Grange Developments, their Managing Director and legal adviser both confirmed that it was their understanding that this newly formed subsidiary company of Grange Developments will be wholly owned by Grange Developments Limited. They also confirmed their understanding that the States of Jersey would have a second mortgage on the property with the first mortgagee being the financial institution providing the funding for the development. There have been references in correspondence to a joint venture with Grange but the development agreement as outlined does not allow for such an arrangement.

If the transaction were to proceed upon the basis set out in the development agreement, I would have to advise the States that in my experience of the development process it would be an unusual step for a vendor to relinquish its ownership of land without first having receiving a substantial payment. It would also be unusual to relinquish the ownership even if it was to secure any future capital receipts by way of a first legal charge. To have only a second legal charge would put the vendor in a vulnerable position.

It has been stated in various documents that by adopting the proposed development agreement the funding liability would lie wholly with the developer and that should the developer fail the States would have step-in rights. By implication this would over-ride the step-in rights of the primary funder. This is also an unusual situation as the primary funder would normally require step-in rights themselves or the ability to repossess which in effect has the same result. A primary funder would be reluctant to give up such rights to a third party unless that party was a substantial entity prepared to take on the full liability of the funding arrangement. Therefore, in reality, should the developer fail to perform or go into receivership or be liquidated, the States by exercising such step-in rights that may exist would become liable to the primary funder for whatever the company has borrowed. The States would also have to consider very carefully whether they had the development expertise to take over a project that was clearly already in severe difficulty and develop it out in a viable manner. I have stated to the Scrutiny Sub-Panel that I cannot comment upon value and that remains the case but I must express my reservations over the proposals contained in the documents that I have examined as I believe they represent an agreement which carries with it a degree of risk and uncertainty inappropriate in the case of a disposal of a valuable asset.

Subsequent to the interview with Grange, their Managing Director has written in response to the transcript that the proposed Newco will not directly obtain finance from the Funder but will instead merely act as

guarantor for Grange Developments Ltd and that it will be Grange Developments that will be responsible for the base price of the land again with Newco acting as Guarantor. Although this structure does not affect the points I have raised above regarding the proposed development agreement it does add a further layer of risk in that the funds will not go directly to Newco but will pass through Grange Developments initially. The States legal advisors will need to consider the consequences of such an arrangement carefully. In particular, the drawdown of funds will not be within Newco's control and where the States exercise their step in rights, there would need to be certainty over the application of funds to the development both prior to and following the exercise of those rights. Another area of concern would relate to the role of the Viscount should Grange go into receivership during the development. How would the Viscount view the guarantee given by Newco? Notwithstanding step in rights, he may take the view that he will call upon the guarantee to repay the creditors and whilst the Funder is reasonably secured with a first mortgage, the States as a second mortgagee will have little in the way of security. Thus it could find itself in a situation where its step in rights require it to stand by the guarantee but with no recourse to recovery of land value with the Viscount selling the land to pay off Grange creditors. Whilst the States will be a creditor of Grange Developments Ltd the Viscount will not necessarily honour the full amount owing to the States depending upon the amount of creditors and monies owing by Grange.

In my experience of development, I would have to point out that such a structure as the one set out by Grange would be at the very least, unusual and certainly not a preferred choice for a landowner unless there was no other way of disposal available. The only circumstance I could only envisage where this might be the case would be if the land was showing a negative value at the outset [eg: perhaps because of heavy contamination or other serious ground conditions] thus requiring an enterprising approach to create positive value. I can see no such circumstances in the present case.

Additional issues relating to the proposed sale

Changing market conditions

The Treasury and Resources Minister stated in the hearing that it would be difficult for the States to disengage from the arrangements with Grange and go back to the market. There is always a reluctance on the part of a vendor to change their allegiances at a late stage. However, there is no legal commitment in existence with Grange although, as I have referred to previously, it would be normal for a developer to have some sort of protection during the process for precisely this reason. They have failed to secure such an agreement, and in correspondence with the Director of Property Services (letter dated 13 February 2006) they state "I would also point out that the underwriting should take place in the event that the proposed scheme does not progress with me (Grange Developments Limited) i.e. should the States proceed with my scheme but with another party".

One can only deduce from this statement that Grange themselves recognise that if they do not reach a sensible agreement with the States, the States would be at liberty to proceed with another party. The States appear to have tacitly acknowledged this by agreeing to underwrite Grange's costs to a maximum figure of £150,000. In the absence of any formal written agreements I view this as an acceptance by Grange that the States are at liberty to consider other proposals. In development terms it is not unusual for parties to fail to reach agreement despite each party having put in financial and physical effort but as a norm a more formal basis of agreement would have been reached at a far earlier stage. Whilst the discussions on value have only recently been gone into in any detail (February 2007) it is clear that market conditions have improved considerably since the original expressions of interest in 2005. It would be prudent, therefore, for the States to obtain an up to date open market valuation of the site with the benefit of the existing planning consent to establish whether the offer currently being made by Grange is one that they can proceed with. This is not withstanding the comments that I have previously made regarding the structure of the proposed development agreement over which I have serious misgivings.

The States have been made aware of recent expressions of interest from other developers following the grant of planning consent. This is almost inevitable in a rising market where no binding contract exists between the vendor and the preferred developer. Those expressions of interest have indicated that there is a possibility that the value of the JCG site is greater than that anticipated in the proposed development agreement. The States must therefore satisfy themselves on that point before proceeding further.

Recommendations

1. The States should review their method of property disposal to establish the correct method appropriate to a specific site.

2. The States should determine a criteria statement to enable them to consider proposals where a straightforward sale of a property is not possible.

3. Marketing strategies should be considered for any disposal prior to advertising and a decision made as to whether such marketing should be carried out in-house or an external agent/surveyor appointed.

4. Where informal discussions are carried out prior to any formal marketing, the details of such discussions should be documented and the rationale for choosing the parties approached clearly stated.

5. Where a disposal property requires a development brief the States should provide its Officers with clarity upon priorities relating to planning, economic viability, uses and social issues which may affect the brief.

6. In choosing a purchaser or preferred developer or joint venture partner the States' Officers need clearly defined goals and objectives to enable them to consider fairly each offer/proposal.

7. Legal advice should be sought at an early stage so that the choice of a preferred developer can be documented so that both parties have security in proceeding with a scheme.

8. Where disposals are for whatever reasons complex and/or likely to take a period of time to reach an outcome independent advice should be obtained at appropriate stages in respect of values.

9. Prior to the choice of any purchaser/preferred developer, due diligence should be carried out on the parties concerned to establish their financial standing and their ability to deliver their proposals. Whilst it is accepted that this may have to be duplicated at a later stage where a scheme such as the one under consideration takes a significant period of time to reach fruition, it is imperative at the outset that the chosen party is the right one from the beginning.

Conclusions

Whilst there is no evidence to suggest that all parties have proceeded in anything other than good faith, it is evident that there has been a lack of direction that has resulted in the States and the preferred developer reaching a stage where value has been created in the site (with the grant of planning consent) but with no binding commitment between the parties. In the meantime the market has continued to strengthen and as a result a site which some years ago did not seem to be attractive to developers has now become both viable and desirable. Whilst the States may be reluctant to be seen to be changing their minds at this stage, I can see no obstacle to investigating further the question of value and asking Grange to reconsider their offer. At the very least, my comments relating to the structure of the development agreement would require a reconsideration of the financial aspects which in itself will prompt a renegotiation. If Grange are not able to restructure the agreement or improve their offer, then the States would be justified in seeking further offers for the property. I do not consider that this would cast the States in a poor light in the development world and I do not consider that it would have any adverse effect on future property disposals.

If there are any further matters you wish me to consider or elaborate on further I should be only too pleased to do so.

ROBERT E H WRAGG FRICS 10th May 2007