

Report in the Public Interest:

Sale of Former Abattoir Site, Newtownards

**Ards Borough Council
Audit 2009-10**



**J S Buchanan
Local Government Auditor
12 November 2010**

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Summary

- 1 In April 2007 Ards Borough Council (the Council) drew to the attention of my predecessor its concerns with the sale in 2004 of the former abattoir site, Newtownards. The Council had sold the land for £6 million (plus a top-up ranging from £1.25 million to £4.5 million depending on the scale of the planning permission obtained by the purchaser, “the Developer”). More than three years later only a deposit of £600,000 had been received. The Council was exploring its options as it now considered the process which led to the contract entered into in 2004, as flawed, with particular concerns arising from the potential top-up payment to the Council.
- 2 I asked the Council to provide updates on the progress of this issue which culminated with the Developer and the Council setting aside the 2004 contract. A revised contract was signed in October 2009. Under the terms of the contract, the Council received an additional £7.4 million, to add to the £600,000 deposit received in 2004, with a further £1 million payable in March 2011. Total sales proceeds for the former abattoir site would be £9 million.
- 3 I decided not to report on this issue until the revised contract had been completed in case my findings influenced the process. The sale of the former abattoir site is the Council’s largest ever disposal of land. It has involved considerable time and cost, and in the absence of the revised contract, would have led to sales proceeds below that envisaged by the Council in 2004. I have decided to issue a Public Interest Report as I have concerns on the following matters:
 - The timing of the sale;
 - The sales process;
 - The pre- contract negotiations; and
 - The professional advice the Council obtained to assist it.
4. The revised 2009 contract enabled the Council to obtain £9 million, £1.75 million more than was likely to be available under the terms of the 2004 contract. The Council is to be commended for its actions from 2005 onwards. However, neither I, nor the Council, can be certain as to whether more than £9 million would have been secured for the site had significant improvements been made in its handling of the sale in the period up to January 2005.

The Way Forward

5. As this is a Public Interest Report, there are formal legal requirements with which the Council needs to comply. The Local Government (Northern Ireland) Order 2005 sections 11, 12 and 13 require the Council to:
 - Consider and discuss my report and recommendations (which are summarised below) at a public meeting;
 - The meeting must be held within one month of the date of the report;
 - The meeting must be publicised in a newspaper circulating in the area at least seven clear days before the proposed date of the meeting;
 - The notice in the newspaper must;
 - state the time and place of the meeting;

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- indicate that the meeting is to be held to consider an auditor’s report and recommendations; and
 - describe the subject matter of the report and recommendations.
 - The Council must as soon as is practicable after the meeting;
 - notify me, as auditor, of the decisions made at the meeting; and
 - publish a notice in a newspaper circulating in the area, with a summary of those decisions as approved by me as auditor.
6. I recommend the Council makes the report available to members of the public and publicises the subject matter of the report and its availability to members of the public.

Summary of Recommendations

- R1** The Council should ensure that decisions taken by Councillors are based on all the evidence available to Council Officers. This should be placed within the context of both previously adopted Council policy and all possible future options.
- R2** All future disposals of land and buildings should fully comply with the Land and Property Services document “Disposal of Surplus Land and Buildings by Public Sector Bodies”. The Council should ensure that all contracts appointing an Agent to act on its behalf on a land or building sale, refer to this document and that the Agent reports progress on a sale within the context of the document.
- R3** Disposals of land and buildings by way of either auction or public tender provide the best means of ensuring the Council can demonstrate all potential purchasers have been treated in an even handed manner. Where a decision to sell by way of private treaty is taken, the basis for this should be clearly documented, as should the negotiations with a potential purchaser which are a feature of this method of disposal. I view private treaty sales as providing most risk that the Council will be challenged by unsuccessful bidders either legally or by means of a maladministration complaint to the Ombudsman.
- R4** The Council should ensure that future sales of Council assets treat all parties in an even handed manner, and that Council records clearly demonstrate this.
- R5** Councillors should in future be provided with all relevant information, including reports, sufficiently in advance of Council meetings to enable them to fully consider the issues identified. Where reports are prepared late, or a decision has to be taken with some urgency, the reasons for this should be clear to Councillors and recorded in the minutes. As Councillors are responsible for their actions, they should not take decisions where they have had insufficient time to consider a matter, or if they are unclear as to why a decision has to be taken at that time.
- R6** Council Officers should in future ensure that the source of advice to Councillors is clearly identified. If they are reporting advice which they in turn have received, the basis for this, written or verbal,

should be recorded. In the case of written advice Council Officers should consider copying this to Councillors as part of any report on a key matter or decision.

R7 The Land and Property Services document “Disposal of Surplus Land and Buildings by Public Sector Bodies” notes

“In seeking professional guidance on the sale of surplus property, disposing bodies are advised to obtain explicit advice from the local Department of Environment Planning Service on whether there is likely to be potential for development”.

In all future land and buildings sales, the Council should ensure it seeks advice from the Planning Service.

R8 In considering professional support to assist in future land and building disposals, the Council should consider not only the price but the quality of the service it requires. In complex cases, professional advisers should be asked to provide clear evidence that they have experience of similar transactions. The Council should also ensure that it has all the professional advice it needs and, in the event of more than one appointment, the responsibilities of each adviser, and those of the Council, are transparent to all involved.

Introduction and Background

7. In accordance with the Local Government (Northern Ireland) Order 2005 (the Order), auditors of District Councils are designated from the staff of the Northern Ireland Audit Office by the Department of Environment, with the consent of the Comptroller and Auditor General. I am the auditor appointed to audit the accounts of Ards Borough Council (the Council). Section 9 of the 2005 Order requires me to consider whether, in the public interest, I should report on any matter coming to my notice during the audit so it can be considered by the body concerned or brought to the attention of the public.
8. The Order provides for two Public Interest Report options:
 - An immediate report; or
 - A report on any matter coming to the auditors notice during the course of an audit. This report is to be issued within 14 days of the closure of an audit.
9. This Public Interest Report has been issued following the closure of the 2009-10 audit of the Council and the inclusion in the Council's financial statements of sales proceeds from the sale of the former abattoir site. My report, however, covers a much longer period beginning in the 1990's.

Detailed Findings

Link Road Land

10. From 1995 the Council's files record correspondence concerning proposals to develop lands between the Comber Road and the Portaferry Road, Newtownards. The potential developer wished to ensure any development coincided with the opening of a new link road between the Comber and Portaferry Roads (see attached map at Annex A). The Council's abattoir site adjoined the proposed development and a large proportion of the route for the new link road was over the site of other Council owned land.
11. In 1998 the Council sought advice from the Valuation and Lands Agency (VLA - now part of Land and Property Services) on possible options. These ranged from negotiating with the Developer on the link road land owned by the Council, to a sale on the open market, at a later stage, of all the remaining Council land. VLA responded that a very significant enhancement in value to Council owned land would occur as a result of the development and construction of the link road.
12. In negotiations the Developer agreed to pay for the construction of the link road. VLA outlined it was very much in the Council's interest to fully co-operate with the Developer and on the provision of access to its land for the developer to build the link road. Even if this were to involve a nominal price, the enhancement in value to the rest of the Council owned land outweighed any shortfall in sales proceeds. VLA indicated, however, that a sale of the remaining Council land should be deferred. At a Special Council Meeting (1 September 1998) the Council agreed to negotiate with the Developer on the provision of access to the link road land to enable the development of the road to proceed.
13. Following a nominal offer of £1 from the Developer, VLA confirmed agreement to the Council selling its interest in the link road land "subject to appropriate conditions". The Council approved this course of action on 28 October 1998. VLA later added that the Council should appoint a Solicitor with specialist knowledge of commercial property development in order to protect the Council's interest in what was likely to become a complex contract. On completion of the negotiations the Council sold its interest in the link road land to the Developer.
14. The Council appointed a Solicitor (Solicitor A) to deal with the link road land and this subsequently passed to another Solicitor (Solicitor B). There is no evidence on the Council's files of any process or procedure to establish the level of specialist knowledge held by the Solicitor.
15. An agreement on the link road land was signed between the Council and the Developer on 18th April 2000. This included provision for the lands to return to the Council by March 2002 if the Developer had not obtained planning permission for the construction of the roadway, and completed the link road within a further 24 months. The Council later extended the March 2002

deadline by one year. With regards the link road, the Council had secured an agreement which was consistent with the advice received from VLA.

16. Planning permission for the link road was obtained in May 2002 which, in accordance with the Agreement signed in 2000, meant that the road had to be constructed within 24 months (May 2004). In December 2002 the Developer informed the Council that it wished to set aside the May 2004 deadline. Instead it wanted to enter into an agreement (an Article 122 Agreement) with the Department for Regional Development on the construction of the link road from the Portaferry Road to the Comber Road and an additional road from the Comber Road to the A20 from Belfast (see attached map at Annex A).¹ The Developer proposed that the timetable in the Article 122 Agreement should provide the basis for delivery of the link road and would take the place of the May 2004 deadline. If accepted, this would provide greater uncertainty for the Council as to when the link road would be constructed.
17. The revised proposals on the timing of the construction of the link road should have had implications for the Council's strategy of facilitating the completion of the link road as a means of enhancing the value of its remaining land. Options for the Council included refusing the Developer's proposed changes (and reviewing its position for all the land), or accepting the changes and the uncertainty in the timing of the link road construction which would arise. But a change in the Council's position on the remaining land (paragraphs 18-23) meant these options were in effect academic.

Decision to Sell the Former Abattoir Site

18. In September 2001 the Council's Abattoir Committee considered both the sale of the abattoir as a "going concern" and what it might achieve if sold for alternative land use. VLA valued the land at £6,450,000 but advised that there was probably no market for a sale as a going concern. At a September 2001 meeting the Abattoir Committee recommended the sale of the site. There is no record of the Council having considered this decision in light of the 1998 VLA advice that the land would increase in value once the link road was in place. Under the terms of the Council's 2000 agreement with the Developer, the development of the link road was at least two years away, even before the Council subsequently agreed to an extension (paragraph 15).

Recommendation

- R1** The Council should ensure that decisions taken by Councillors are based on all the evidence available to Council Officers. This should be placed within the context of both previously adopted Council policy and all possible future options.

¹ An Article 122 Agreement enables the Department for Regional Development to construct a road where it is satisfied that it will be of benefit to the public.

19. In April 2002 a Council Officer wrote to VLA outlining that the Council wished to offer all of its land on the abattoir site for sale. This land overlapped much of the land subject to the 2000 link road Agreement with the Developer but omitted a section from the site to the Portaferry Road (see map at Annex A). VLA responded a month later repeating the advice given in 1998:

“A sale at this stage is seen as premature. The land would be more attractive with the link road in place”.

In response to the Council, VLA also provided a list of Agents who had commercial experience.

20. The Council’s Policy and Resources Committee approved the appointment of an Agent from the list for the land sale in August 2002, including the Agent’s recommended approach. The successful Agent advised a sale by means of private treaty with a move to public tender if matters became protracted. The report to the Committee, including the Agent’s proposals, notes that VLA would “prefer a sale by Public Tender”. The Agents were appointed under a standardised contract as “Agents to dispose of Property”. The fee quoted by the Agent was by far the most competitive (0.05% of sales proceeds) with the nearest competitor eight times this at 0.4%.

Recommendation

- R2** All future disposals of land and buildings should fully comply with the Land and Property Services document “Disposal of Surplus Land and Buildings by Public Sector Bodies”. The Council should ensure that all contracts, appointing an Agent to act on its behalf on a land or building sale, refer to this document and that the Agent reports progress on a sale within the context of the document.

21. In October 2002 the Agent placed advertisements in the press, including the Belfast Telegraph and circulated details of the sale to parties registered on its mailing list. The sale details noted that the land comprised three plots of land extending to 15.71 acres in total. It also noted:

“Under an agreement with the Council, the Developer [is] to construct the road entitled ‘New link road at Castlebawn and Ards Borough Council Abattoir’. The roads are to be constructed within 36 months of obtaining planning permission and the Council (or successor parties thereto) will have full rights of access over them”.

The reference to 36 months is at variance with the 2000 link road agreement which included a 24 month time frame for the Developer to complete the road.

22. The Agent forwarded details of five bids to the Council over the period December 2002 to March 2003 and indicated that there was also other interest. A bid from the Developer extended beyond the 15.71 acres included in the Agent’s sale details. It included the adjoining link road land from the Portaferry Road to the former abattoir site, which, although part of the Developer’s 2000 link road Agreement with the Council, had not been offered for sale in October 2002. It is my view that

were the Council to agree to this outright purchase, all of its interests in the link road land would transfer to the Developer and would supersede the 2000 Agreement. The issue of a completion date on the 2000 link road Agreement (paragraphs 16 and 17) would be irrelevant in the event of all link road land being sold to the Developer.

23. The Council's Policy and Resources Committee approved the appointment of Solicitor B to deal with the land sale in October 2002 following a tender process. As with the earlier appointment (paragraph 14), there is also no evidence on the Council's files of any process or procedure to establish the level of specialist knowledge held by the Solicitor. Similar to the appointment of an Agent, Solicitor B's tender was significantly below its competitors.

“Best and Final Proposals”

24. In March 2003 the Council agreed to the Agent’s proposal that all parties be contacted to provide their “best and final proposals”. To allow a like for like comparison, each submission would address some set issues. Proposals were to be submitted to the Agent by 12.00 noon on 25th April 2003. It is not recorded by the Agent or the Council if this represented the public tender process envisaged by the Agent or a confirmation of private treaty negotiations. As part of a public tender process the deadline outlined should have been strictly enforced.

Recommendation

- R3** Disposals of land and buildings by way of either auction or public tender provide the best means of ensuring the Council can demonstrate all potential purchasers have been treated in an even handed manner. Where a decision to sell by way of private treaty is taken, the basis for this should be clearly documented, as should the negotiations with a potential purchaser which are a feature of this method of disposal. I view private treaty sales as providing most risk that the Council will be challenged by unsuccessful bidders either legally or by means of a maladministration complaint to the Ombudsman.

25. Six interested parties, including the Developer, submitted best and final proposals to the Agent by the set deadline. In the case of the Developer, two submissions were made dated 25 April. One proposal was an unconditional cash offer while the other, conditional offer, involved less ‘up front’ cash but included a top-up payment depending on the scale of the planning permission obtained by the Developer. There is no evidence that the Agent, or the Council, queried two proposals from the Developer which appears to be at odds with a process requiring best and final proposals.
26. The Developer wrote to the Agent on 30 April, one day after the Agent completed his report providing, in respect of the conditional offer,

“an opportunity to clarify a number of issues in relation to our submission”

The Developer also copied this letter to the Council. It is unclear who sought this clarification or if a clarification opportunity was offered to the other interested parties. From Council records I am uncertain to what extent this clarification influenced the Council’s assessment of the proposals from the interested parties.

Recommendation

- R4** The Council should ensure that future sales of Council assets treat all parties in an even handed manner, and that Council records clearly demonstrate this.

27. Both submissions from the Developer to the best and final proposals process, and indeed, offers prior to this, included lands in respect of the link road from the Portaferry Road to the land offered for sale in October 2002 (see attached map at Annex A). As noted at paragraph 22 this had not been included in the three plots which the Council had offered for sale. As a result the Council had not received submissions from the Developer which met their key objective of being able to examine submissions from all interested parties on a like for like basis. The Council was being asked to sell more land to the Developer. This significant issue should have been central to the Council's comparison of the proposals from the Developer against the other proposals received.
28. A Special Meeting of the Council was held on 1 May 2003 to discuss the sales proposals. At the beginning of the meeting Councillors were provided with copies of the Agent's 29 April report. This extended to over 20 pages and included a conclusion that one of the Developer's proposals was "the strongest proposal we have received". The Agent's report did not record alongside the recommendation to favour the Developer's proposal, the additional land sought by the Developer (although a summary of offers section included in the report did refer to the additional land). The Agent's report also did not note alongside the recommendation to favour the Developer's proposal, that the Developer had indicated that its offer would be withdrawn if not accepted at the Council meeting on 1 May 2003 although the summary of offers section included in the report did refer to the possible withdrawal. The minutes of the meeting do not record that the additional land included in the Developer's proposals was discussed, nor do they record the potential withdrawal of the Developer's proposals. The minutes indicate a Council Officer referring to the 'clarification' from the Developer (paragraph 26) but it is not clear if this was copied to Councillors.
29. At the 1 May 2003 Council meeting one Councillor is recorded as expressing concern that Councillors were expected to make a decision at such short notice. The minutes note that the Council was awaiting clarification on a variety of matters until late in the day. Given the importance of the land sale to the Council, and the complexity of the proposals, Councillors could have been expected to take some time to come to a decision. The meeting however concluded with a unanimous resolution to accept one of the Developer's proposals.

Recommendation

- R5** Councillors should in future be provided with all relevant information, including reports, sufficiently in advance of Council meetings to enable them to fully consider the issues identified. Where reports are prepared late, or a decision has to be taken with some urgency, the reasons for this should be clear to Councillors and recorded in the minutes. As Councillors are responsible for their actions, they should not take decisions where they have had insufficient time to consider a matter, or if they are unclear as to why a decision has to be taken at that time.

30. The Developer's proposal accepted by the Council comprised sales proceeds of £6 million (including £600,000 deposit) plus a top-up ranging from £1.25 million to £4.5 million, with payments above

£1.25 million depending on the scale of the planning permission obtained. The minimum top-up would be payable in February 2009 if no planning permission had been obtained by this date.

Pre-Contract Negotiations

31. During pre-contract negotiations the Developer indicated that it wished to include a clause that the sale would be conditional on completion of the Article 122 Agreement on the link road. This would delay the timing of the payment of the outstanding £5.4 million sales proceeds. At its 17 December 2003 meeting the Council agreed to the proposed contract changes. One Councillor expressed concern at the short notice to consider the matter and a proposal to defer this decision was defeated.
32. The Council seems to have considered itself to be in a weak bargaining position with little alternative other than to accept the revised sales conditions sought by the Developer. The Council considered that moving to any other purchaser would mean the Developer would influence any development of the former abattoir site because of its interest in the link road. I saw no evidence that the Council considered allowing its agreement with the Developer on the link road to lapse – this could have occurred in May 2004 (ie in accordance with the 2000 Agreement that the link road should be constructed within 24 months of obtaining planning permission – see paragraph 16). The Developer had an interest in the link road land because the Council had agreed to this. The Council had the option to let this interest lapse in six months time and proceed to sell the former abattoir site without any further investment from the Developer.
33. In early 2004 the Council received at least two further enquiries regarding the land it was proposing to sell. This ongoing interest seems inconsistent with the Council's view that its only real option was to deal with the Developer.
34. In January 2004 the Council sought advice from the Agent with regards the contract negotiations. The Agent considered a revised offer from the Developer and confirmed it represented a "market price".
35. Legal advice was also sought on further land sales issues, ahead of any sales contract being completed, and specifically on a letter from a Councillor's Solicitor expressing concern at developments. The advice was not sought from Solicitor B handling the land sale. Solicitor C concluded:
 - The Council was perfectly entitled to decline any further interest in the land;
 - The Council was not compelled to reconsider its original sales condition but should refer continued interest back to the Agent; and
 - The Council should ensure the Developer provides a guarantee of its rights in the event that the land is subsequently sold to another party.
36. The land sale, including the legal advice sought from Solicitor C, was discussed at the Council meeting of 28 January 2004. There is no record of action taken in response to Solicitor C's recommendation that the recent interest in the land should be referred to the Agent. Reference is

made to verbal advice from Solicitor C as the written advice had not yet been received. A Council Officer noted that it included the view that:

“The Council was at no risk by proceeding, but could in fact be at risk if it did not proceed”.

Having examined the written advice I found no reference to the Council’s exposure to risk in the event that a sale of the land to the Developer did not proceed. A draft contract was tabled at the meeting having been received from the Developer earlier that day. A motion for the Council to consider the draft contract was defeated and the draft contract was accepted subject to legal advice.

Recommendation

- R6** Council Officers should in future ensure that the source of advice to Councillors is clearly identified. If they are reporting advice which they in turn have received, the basis for this, written or verbal, should be recorded. In the case of written advice Council Officers should consider copying this to Councillors as part of any report on a key matter or decision.

Sales Contract

37. The contract for the sale of the former abattoir site to the Developer was signed on 6 February 2004. In 1998 and 2002 VLA had recommended delaying a sale until the link road was in place as the Council's land would increase in value. The timing of the sale meant it was the Developer, and not the Council, who would derive any windfall in value on the former abattoir site from the construction of the link road. By ensuring that payment of the balance of the sales proceeds (£5.4 million) would not fall due before the Article 122 Agreement to have the link road was in place had been secured, the Developer had benefited its cash flow at the expense of the Council. Delays in the delivery of the road subject to the Article 122 Agreement, over which the Council had no control, would impact on the Council rather than the Developer.
38. The February 2004 contract contained important clauses on the additional top-up to be paid to the Council which were not picked up by Solicitor B or the Council. The £4.5 million maximum top-up was only payable if the Developer secured outline planning permission for 120,000 square feet of class one retailing by February 2009. A sliding scale applied in respect of reduced retail space down to the point where the minimum (£1.25 million) would be payable in February 2009 if no outline planning permission had been secured. Several clauses of the 2004 contract actively mitigated against the Council achieving any significant part of the top-up. This included the absence of a 'best endeavours' clause which meant that the Council could do nothing if the Developer deliberately submitted planning applications which were refused. Consequently only the minimum top-up of £1.25 million was all that the Council could enforce under the February 2004 sales contract.
39. There is no evidence that the Council contacted the Planning Service to see if 120,000 square feet of class one retailing was likely to receive planning approval. In the absence of this, the Council had no firm basis for believing the maximum top-up payment of £4.5 million was capable of achievement.

Recommendation

- R7 The Land and Property Services document "Disposal of Surplus Land and Buildings by Public Sector Bodies" notes
- "In seeking professional guidance on the sale of surplus property, disposing bodies are advised to obtain explicit advice from the local Department of Environment Planning Service on whether there is likely to be potential for development".
- In all future land and buildings sales the Council should ensure it seeks advice from the Planning Service.

Council Concern with the Sales Contract

40. In January 2005 the Developer had not submitted an outline planning application and contacted the Council to see if the top-up sliding scale could be reduced. The Council decided to seek legal advice on whether failure to apply for planning permission represented a fundamental breach of the sales contract.
41. During 2005 and 2006 the Council commenced a review of its files relating to the sale of the former abattoir site to the Developer, in particular the February 2004 sales contract. The Council appointed another firm of Solicitors (Solicitor D) to review the contract, independent from Solicitor B who dealt with the 2004 sales agreement (paragraph 23), and Solicitor C asked to examine issues in the negotiations leading up to this contract (paragraph 35). This review uncovered several issues and in particular the difficulty the Council would experience in obtaining the maximum additional top-up. The Council also obtained advice from a Senior Counsel.
42. The legal advice obtained in December 2006 and February 2007 was reported to the Council meeting of 28 February 2007. The Council approved seeking further legal advice from Solicitor D and, in the event of being unable to reach agreement with the Developer, taking legal action against the company for breach of contract. In March 2007 the Council gave authority for all files held by the Solicitor engaged in the 2004 sales contract to be transferred to the Solicitor undertaking the contract review.
43. Throughout 2007 the Developer sought a completion of the 2004 sales contract. The Council had retained the title deeds to the former abattoir site. The Council continued to seek both legal and specialist advice to review all aspects of the 2004 contract and in December 2007 again obtained advice from a Senior Counsel on the way forward. In his view there was no prospect of a contract compliant planning permission being achieved because of the terms of the contract. He recommended that the Council should not complete the sale in the expectation that the Developer would pay some additional monies, over and above the minimum top-up, rather than risk a process of protracted litigation. Senior Counsel indicated that the Council could argue that the Developer had breached the contract terms with regard to obtaining outline planning permission. Litigation would take up to 18 months and the Council believed the Developer wanted to progress the development as soon as possible.
44. A further difficulty with the 2004 sales contract related to the possible onward sale of the former abattoir site by the Developer. Solicitor D who had reviewed the draft contract in January 2004 (paragraph 35) pointed out that the Council should ensure the Developer provides a guarantee of its rights in the event that the land was subsequently sold to another party. No such clause was included in the 2004 sales contract. Consequently had the Council completed the sale, the Developer could then have sold the site to another party which had no obligation to apply for outline planning permission and pay the additional top-up.

45. Although negotiations continued the Developer began proceedings in the High Court in April 2008 to compel the Council to complete the 2004 sales contract. Before this was addressed by the High Court, the Council and the Developer reached agreement. The terms included rescinding the 2004 sales contract, the Developer's withdrawal of its legal proceedings, payment to the Council of £8.4 million (which, added to the £600,000 received in 2004, meant a total price of £9 million), and that each party would bear its own legal costs.
46. The Council is to be commended for its actions from 2005 forwards. Having discovered the onerous nature of the 2004 sales contract it secured appropriate legal advice and adopted a successful strategy to make the most of its position. Had the Council simply accepted the terms of the 2004 sales contract, it seems likely it would have obtained £7.25 million from the Developer (the original price of £6 million and the minimum top-up of £1.25 million). The Council achieved an additional £1.75 million by securing a revised agreement with the Developer.
47. It is important, however, to place the £7.25 million sum payable under the 2004 sales contract in context. This had been achieved from a sale which:
- VLA had advised the Council was premature. If VLA was correct, delaying the sale would have been beneficial to the Council, either because the Developer had constructed the link road, or alternatively because the Council had ended the Developer's interest in the link road;
 - Involved a best and final proposal process which does not appear to have treated all interested parties in an even handed manner. Had other parties been given the opportunity to add to their best and final proposals, they might have improved on the offer from the Developer which had been accepted by the Council;
 - Involved the Developer seeking to buy more land than had been offered for sale. Had the Council added the link road land, from the Portaferry Road to its advertised land, to the October 2002 sales details, it is possible this would have resulted in increased offers from at least some of the five other interested parties who submitted best and final proposals.

There is no means of assessing which, if any, of these factors would have increased what was on offer from other parties interested in the sale of the former abattoir site. And if more had been available, it is uncertain if this would have secured more than the £9 million which the Council achieved five years later from the revised contact with the Developer.

48. The Council secured the additional sum of £1.75 million at a cost of £300,000 in legal and other professional fees from January 2005 onwards. This comprised advice on the 2004 sales contract, advice on the protracted negotiations with the Developer between 2005 and 2009, and a review of the professional advice received by the Council in respect of the 2004 sales contract. Considerable Council staff resources will also have been used in the protracted negotiations with the Developer.

49. The Council's review of the professional advice received in respect of the 2004 sales contract was critical of the Agent, Solicitor B and the Council's approach to appointing these advisors. The Council examined the opportunities to take legal proceedings against the Agent and Solicitor B.

The review concluded:

- in respect of the Solicitor B, he had been retained to complete the formalities of the legal conveyance and was not specifically retained to provide advice. Regarding the pre-contract negotiations and preparation of the 2004 sales contract, the Solicitor was never asked for advice;
- in respect of the Agent, although advice had been provided, the contract of appointment recorded "Legal Advice will be provided by the Council's Solicitor";
- in respect of both Agent and Solicitor, each could blame the other for the unfavourable 2004 sales contract in any litigation process instigated by the Council;
- both Agent and Solicitor could seek to implicate the Council's own contributory negligence in any loss arising from their actions.

50. The review concluded that any litigation was unlikely to be successful because of the Council's contributory negligence and difficulty with proving that the extent of any losses incurred by the Council could be linked to the actions of the Agent and Solicitor B. The Council accepted this advice at its meeting of 28 July 2010.
51. In relation to appointing a Solicitor to advise on the 2004 land sale, I note the review findings that the Council appears to have been motivated more by consideration of cost savings than the specialist protection of the Council's interests. The Council was right to consider costs in its appointment, but ensuring a Solicitor had specialist knowledge of complex commercial property development (as recommended by VLA in 1998 – paragraph 11) was, in this case, of at least equal importance.

Recommendation 8

- R8** In considering professional support to assist in future land and building disposals, the Council should consider not only the price but the quality of the service it requires. In complex cases, professional advisers should be asked to provide clear evidence that they have experience of similar transactions. The Council should also ensure that it has all the professional advice it needs and, in the event of more than one appointment, the responsibilities of each adviser, and those of the Council, are transparent to all involved.

ANNEX A

Map: Former Abattoir Site, Newtownards

