

Internal Review Purchase of Brooklands Avenue - Jaywick

Executive Summary

The purchase of Brooklands Avenue (Jaywick) was selected by the National Audit Office (NAO) in the sample of projects they substantively review as part of the annual external audit process. As a result of the audit a number of issues were raised by the NAO. The Audit Committee subsequently requested an internal review of the Jaywick transaction with a view to strengthening the internal control environment, where appropriate.

At the very outset of this transaction it was clear from the correspondence reviewed that the Executive were acting in the interests of the DTI, EEDA and the taxpayer to achieve the most cost effective method of purchasing the Brooklands Avenue site. The Director General Operations discussed the concept of purchasing the site with the DTI in advance of the transaction and explored the numerous mechanisms for purchasing the site with the EEDA Executive. It was, and always has been, the Executives understanding that the purchase price was £150,000. The further ex-gratia payment of £100,000 made to the Jaywick Sands Freeholders Association Trust Limited was ringfenced specifically for projects to assist in the achievement of EEDA's corporate objectives (please refer to annex 2, clause 21.4 of the contract where this is stipulated).

Background

The approach adopted for the review was to review the project documentation and legal documents for the transaction and note the key points and lessons learned. Please refer to annex 1 of the report for a list of the key documents reviewed.

The following text is an extract from the 2005/06 NAO management letter and sets out the NAO's response to reviewing the Jaywick transaction;

“On the 31 March 2006 EEDA purchased the Jaywick site for above market value. The site had a market value of £55,000 and was purchased for £250,000. As the purchase price was greater than market value, EEDA's Financial Memorandum requires approval to be sought for the purchase from the DTI. The NAO could find no evidence of such approval having been given. Senior management were involved in the decision to purchase the site at above market value as the site was considered to be strategically significant to EEDA.”

The EEDA management response to the above observation was as follows;

“Regarding the Jaywick site, as stated, senior management were fully aware of the site being acquired at above market value. However, the cost of acquisition was £150,000 not £250,000. A further payment of £100,000 was made to the vendors, but as a grant which was required to be deposited in Trust for use in the immediate neighbouring area, for the benefit of the community and with restrictions on the eventual use ensuring that such funds were utilised towards activities consistent with EEDA's priorities and objectives in the area. Prior to completing the purchase, discussions were held with the DTI, on the basis that this site comprised a strategic purchase in a targeted area of deprivation, and formed part of EEDA's longer term intentions for the development of this area. The possibility of using CPO powers was considered, but based on an assessment that the eventual cost of this route would add in the region of £100,000, it was concluded that provided the actual purchase price did not exceed £150,000, this could be approved and would constitute value for

money. The DTI were comfortable with this approach. The Project Executive agreed that this route was appropriate, provided that the purchase price was not more than £150,000. Copies of correspondence with DTI and the contract for sale have been provided to NAO which confirm the discussions with DTI and the fact that the consideration for the site was £150,000, with the remaining £100,000 being a grant with restrictions as set out above.”

Key points arising from the review

- 1) The contract for purchase was dated the 31 March 2006 and the parties involved were Jaywick Sands Freeholders Association Limited (in liquidation), Jaywick Association Properties Limited and EEDA. The purchase price within the contract is defined as £250,000 of which £150,000 shall relate to the land and the balance of £100,000 is an ex-gratia payment to the first seller to be applied in accordance with clause 21.2 of the contract. Clause 21.2, 21.3 and 21.4 are detailed in annex 2 of the report and in summary require the formation of a Trust to fund charitable projects aimed at the regeneration of Jaywick Sands in accordance with the objectives of EEDA's Corporate Plan.
- 2) The Jaywick Sands Freeholders Association Trust Limited was registered at Companies House on the 25 May 2006. The memorandum and articles of association of JSFA Trust Ltd does not formally include the requirement of clause 21.4 of the purchase contract. Therefore in order for EEDA to have assurance on how the £100,000 has been disbursed this will require proactive management from EEDA's assigned project manager.
- 3) The payment has been verified and EEDA paid £250,000 to the solicitors account (Mills & Reeve) on the 29 March 2006. Consisting of £150,000 in relation to the land and £100,000 in relation to the ex gratia payment to the Trust. Mills & Reeve confirmed that payment was made to the vendors on the 31 March 2006 for the full £250,000.
- 4) From a review of the email trail contained within the PMS audit file it is evident that the Chief Executive and Director General Operations had discussed the Jaywick transaction and the concept of purchasing land above market value in March 2005. A discussion on the purchase of Jaywick was recorded at the Executive Management Team meeting on the 15 March 2005.
- 5) In the event that the seller refused to sell the land at the assessed market value, the only recourse open was to consider a compulsory purchase acquisition. The associated costs of pursuing a CPO were considered to be higher than the differential between the sale price and market value. The Director General (Operations) contacted the DTI and was given verbal advice that the DTI would be comfortable to support an arrangement where the differential between the sale price and valuation was less than the cost of pursuing a CPO acquisition and that not to do so would be perverse. The DTI recommended a full detailed costing should be done (properly establishing the likely compulsory purchase costs) and Board / Chief Executive approval obtained for any above “market value” finally agreed. We have not been able to find any evidence to suggest this technical valuation exercise was performed and formally reported to the Chief Executive Group.

Learning Points

- 1) All land and property acquisitions above market value should comply with the Financial Memorandum and DTI written consent should be gained before the transaction takes place.
- 2) As a matter of internal control a template land / property acquisitions and disposals authorisation will be introduced. This will have all the necessary supporting documentation attached for the transaction and prompt the recommending officer to consider all the relevant legislative restrictions that EEDA operates under. Key information on the form will include the purchase price, valuation price (supported by the valuation certificate) and where the proposed purchase price is greater than the valuation written approval from the

DTI to proceed with the acquisition. Not until all of this documentation is in place will the authorisation be signed off by the Director General Operations. The written authorisation should then be placed on the respective project file as key audit evidence that EEDA has complied with our Financial Memorandum and other legislative requirements.

- 3) If possible transactions of a significant nature / value should be avoided on the last day of the financial year (31 March). There is a heightened risk that errors may occur in condensing the timeframe to complete acquisitions and disposals prior to the last day of the financial year.
- 4) Where EEDA propose to use a similar mechanism in the future such as an ex-gratia payment that may involve/stipulate the formation of a Trust to disburse the funding then it should be made absolutely clear how and who within EEDA monitors the Trust's activities.
- 5) If EEDA's sponsoring body (DTI) suggests an approach or course of action then this should be considered by the Executive and an appropriate decision recorded.

Annex 1 - Key Documentation reviewed

- i) Signed contract of the Jaywick Brooklands Avenue acquisition dated 31 March 2006
- ii) Copy of the Memorandum and Articles of Association of Jaywick Sands Freeholders Association Trust Limited (the form of which was approved by Mills and Reeve)
- iii) The PMS file on the Jaywick transaction including copies of emails sent in relation to the transaction

Annex 2 - Extract from the contract for sale

21.2 It is agreed between the Parties that the sum of one hundred thousand pounds (the "First £100,000 Payment") comprising part of the purchase price under the terms hereof is to be placed in trust by the First Seller following completion and that such First £100,000 Payment will be applied

- (a) to the funding of charity projects for the regeneration of Jaywick Sands ,Essex or
- (b) by the transfer to one or more bodies established or working to improve living conditions for the benefit of the residents in Jaywick Sands, Essex.

21.3 It is further agreed that the First Seller shall use reasonable endeavours to establish a Trust (the "Trust") for the purpose of clause 21.2 within 3 months of the date of completion and the terms of the Trust deed insofar as they relate to the First £100,000 Payment shall be agreed between the First Seller and the Buyer.

21.4 The Trustees of the Trust established pursuant to clause 21.2 shall agree which projects and bodies are to be funded by the Trust but for the avoidance of doubt the First £100,000 Payment shall not be used in funding any project or body where such funding is not in accordance with the Buyer's corporate objectives as set out in its Corporate Plan from time to time nor where the proposed allocation or application of such funds would conflict with other projects and for bodies funded by the Buyer for the benefit of residents of Jaywick Sands, Essex.