
DP 40/99-03

The Disposal of North Wales Hospital, Denbigh

North Wales Health Authority

Audit 1998/1999



DISTRICT AUDIT

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for the Audit Commission

Summary Report

Detailed Report

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Introduction

North Wales Hospital was built in the 1840s and has a Grade II* listed building category. The Hospital was declared surplus to NHS requirements in the mid 1980s and closed in October 1995. Marketing the site for disposal commenced in June 1994. Following the breakdown of two previous agreements to sell, the Hospital was sold to Brockhall Village Limited in April 1999 for £155,000 plus clawback provisions, representing a 50% share of profits generated for three years and a 10% share for a further seven years.

The disposal process was commenced by Clwyd Health Authority and finalised by North Wales Health Authority its successor body (from 1 April 1996). At the same time local government was reorganised with Denbighshire County Council replacing Glyndwr District Council as the local planning authority and Clwyd County Council as the strategic planning authority.

Following expressions of concern about the consideration received for the site we have undertaken a review of the disposal process and our findings are presented in this report.

We are pleased to record our appreciation to those officers and Non Executive Directors of the Health Authority, Clwydian Community Care NHS Trust and the National Assembly who have assisted us in progressing the audit.

Scope

Our audit looked at the Health Authority's management arrangements and strategy for disposing of the site. In particular we considered whether the Health Authority acted within its powers, efficiently, with propriety, and in accordance with relevant guidance and professional advice.

We also considered the adequacy of the guidance and advice issued by the Welsh Office (now National Assembly for Wales) to health bodies on disposal of surplus assets.

Main conclusions

The disposal of North Wales Hospital was a complex transaction involving a combination of physical, social and political considerations. The site had lain empty for three and a half years during which time its condition had deteriorated significantly and there was a risk that Denbighshire County Council would serve a Listed Building Repair Notice on the Secretary of State. Compliance with such a notice would have required substantial expenditure. Also the planning history of the site, with two rejected planning applications made the site less attractive to potential developers. Professional advice given to the Authority and the Welsh Office was to proceed with the sale, on the basis that it was unlikely that a better offer could be secured.

We conclude that given these factors and the prevailing circumstances at the time, it was reasonable for the Health Authority and the Welsh Office to proceed with the sale of the site to Brockhall Village Limited for the agreed terms.

The fact that the Health Authority and Welsh Office had little option but to sell the site for the consideration received stems from a combination of factors arising from the way the disposal process was managed during earlier periods.

Officers of the Health Authority were not consistent in their application of the main guidance on the disposal of surplus properties issued by the Department of Health and adopted by the Welsh Office. The Authority did not fully comply with several requirements, in particular it did not:

- Compile a comprehensive option appraisal for the site that fully considered the piecemeal option.
- Obtain a statement from the relevant Planning Authority regarding the type of development for the site that it would have found acceptable.
- Fully explore the option of undertaking partial demolition of the site in order to increase its marketability.
- Take action to remedy the deterioration of the buildings on the site despite being advised on several occasions by Clwydian Community Care NHS Trust's Estates Officers that remedial work was necessary and that the Authority was at risk of not fulfilling its obligations under the Listed Building legislation. Deterioration of the property contributed to the difficulty of selling the site and securing a higher price.

It is not clear that all relevant facts were always fully reported to the Health Authority Board, in particular a revised offer received from Developer A in January 1998 comprising of an unconditional £500,000 with a further £600,000 when planning permission was obtained.

From April 1994 the Health Authority did not have any in-house estate expertise and was therefore reliant on external advice. Despite this officers did not always seek professional advice and in certain cases chose not to follow it. In particular the advice of the Welsh Office's Chief Estates Surveyor and its property agent regarding the financial standing of Developer C was not followed.

Given the above we conclude that the Health Authority did not always act in accordance with relevant guidance and professional advice. However no evidence that the Health Authority acted beyond its powers or of impropriety came to our attention.

The Welsh Office's (now National Assembly) role in the disposal process was not clear and needs to be clarified as part of its review of NHS estate, considering:

- whether it should take full responsibility with support from the respective Health Authorities
- taking a more active role throughout the disposal process
- establishing more robust monitoring procedures.

The National Assembly for Wales should consider updating and consolidating the current guidance on disposal of surplus properties.

The way forward

The Authority should treat this report as a post implementation review and use its findings as lessons for future disposals. In particular:

- all guidance on the disposal of property issued by the National Assembly for Wales should be followed
- detailed procedures should be drawn up for disposing of surplus property
- all relevant details should be reported to the Health Authority in written reports
- professional advice should be sought, fully considered and wherever possible followed.

The Authority should monitor developments on the hospital site and ensure that the conditions of the contract, in particular clawback are met.

As part of its review of NHS estate the National Assembly for Wales should consider issuing new guidance covering the disposal of NHS estate in Wales. The new guidance should also reconsider the definition of what constitutes maximum benefit to the Health Service to take account of the increased emphasis on collaborative and partnership working. Greater flexibility and investment may be required to achieve the goal of maximising the benefit for the public.

The respective roles of the officers of the Health Authorities and the National Assembly should be clarified. For example where disposals are likely to be complex it could be a requirement that the Estates Division takes the leading role.

A summary of our recommendations is included in Appendix 1.

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Background

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- Preparations to dispose of the site
- Marketing the site
- Sale of the site

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History and geography of the site

- 1 North Wales Hospital, Denbigh is located on a 120 acre site on the southern outskirts of the town. It was built in the 1840s and was successively added to over the years. The Hospital provided care for the mentally ill within North Wales, and as late as 1990 provided a 565 bed facility. It also provided major employment within the area.
- 2 The site consisted of extensive psychiatric healthcare, domestic and administrative accommodation including numerous wards, offices, kitchens, laundry, workshops, a nurses home, a chapel, a doctors' residence, a training school, an isolation unit, a mortuary and some residential accommodation (a plan is shown at Appendix 2).
- 3 All of the Hospital is placed in a Grade II* listed category, as being of special architectural or historic interest, although considerable parts of the total site are not of this quality. Listed status places development limitations on the site, with any developer needing to seek listed planning consent for any development of the site.
- 4 The Hospital's main access is from an unclassified road. This makes access and increasing traffic volume to the site difficult. Also there are no rail links to the site.
- 5 Given the location and traditional importance of the site to the town of Denbigh, any proposed development would be subject to public scrutiny by the local inhabitants and their elected representatives. This was demonstrated by the establishment of an interest group which was vocal in its views on proposed developments.

Guidance on disposal of surplus NHS properties

- 6 Guidance on the disposal of NHS properties is contained in the Land Transactions Handbook published by the Department of Health in 1984. The Welsh Office issued a circular (WHC 90/60) in October 1990 stating that the guidance contained in the Handbook was applicable to Welsh Health Authorities. The Welsh Office in Estatecode Volume 2 issued further guidance on the disposal of listed buildings in 1997.
- 7 The Health Authority's Standing Financial Instructions (SFIs) also provides some guidance on the disposal of surplus assets (see paragraphs 58 to 60).

Preparations to dispose of the site

- 8 The Hospital was identified as surplus to NHS requirements from the mid 1980s following the development of new strategies for the care of the mentally ill, in particular community care. Consultation on closure was carried out in late 1991. After a period of winding down the Hospital was closed in October 1995.
- 9 Preparations for the closure of the Hospital began in the late 1980s. Clwyd Health Authority sought to find an alternative public sector use for the site, for example the Ministry of Defence, Prison Service. Because the Hospital employed up to 1,500 people, the Health Authority focused on trying to find a single user for the site to mitigate the effect of the closure on the local economy. Nothing came of these efforts.
- 10 In 1988 Clwyd Health Authority, Glyndwr District Council, the Welsh Development Agency and Clwyd County Council commissioned planning, economic and development consultants to assess the feasibility of alternative uses for the Hospital site. They reported in January 1989 identifying the principal options for development as:
 - **Barracks** - at this stage the Ministry of Defence was actively considering the site but it was later discounted.
 - **Hotel, timeshare and conference facilities** - the report stated that the scale of investment required would be substantial and would need to draw on distinct and separate markets from the existing country house hotel operations.
 - **Retirement and sheltered housing** - the report stated that prevailing policies in Clwyd were to restrain the growth of retirement homes with emphasis placed on local provision for local need. It also stated that the site would provide facilities on a substantial scale, much larger than most existing operations which were dominated by small operators.
 - **Residential** - the report stated that there was a strong demand for housing in the area and a shortage of land for development, however it stated that there was no potential for converting the existing hospital building into a residential development.

- 11 In December 1991 the Health Authority published a consultation document on the closure of the Hospital. This stated that a relatively modest programme of investment to maintain the buildings would be undertaken and that dereliction and blight would be avoided by demolishing some of the vacated wards. Whilst a small amount of demolition was subsequently undertaken little was invested in the maintenance of the site.
- 12 In November 1992 a Joint Planning Appraisal for the site was produced by Glyndwr District Council and Clwyd County Council. This identified six main sites within the site that had development potential but made no suggestions as to the type of development that would be acceptable to the Local Planning Authority.

Marketing the site

- 13 Property agents were appointed following a tendering exercise. Both Clwyd Health Authority and North Wales Health Authority's policy based on the advice of the property agent was to try and dispose of the site as a single entity. The alternative of seeking piecemeal disposal was resisted in the belief that this approach would result in the NHS being left with the liability of the main listed buildings.
- 14 The site was formally put on the market in June 1994 by Clwyd Health Authority acting as agents for the Secretary of State. We have been informed that in the interests of patients it was agreed that the full marketing campaign would not be commenced until nearer the time the hospital was to close. Therefore the brochure and publicity campaign was not launched until May 1995.
- 15 Welsh Office officials visited the Health Authority in June 1995 and were satisfied that a proper marketing process was being followed.

First agreement to sell (Developer A)

- 16 Little interest was expressed in the site initially, and the first serious offer was received in early 1996 from a London property company (Developer A). Developer A proposed to carry out a housing development through conversion of some of the main listed buildings to flats together with new build. Financial checks on the company concluded that they represented an average risk for this type of company.
- 17 Developer A made an offer of £1 million conditional upon granting of planning permission. They requested a 12 month option arrangement, which precluded North Wales Health Authority from negotiating with any other potential buyer. The Health Authority Board approved this on 23 May 1996 for a 12 month period on payment of a 1% option fee of £10,000 deductible from the eventual sale price. It should be noted that this sum would not have been sufficient to cover the Health Authority's annual outgoing (some £82,000) on the site. The property agent and the National Assembly's Chief Estates Surveyor have both stated to us that in their view the option fee should cover such costs and reflect the fact that the site could not be marketed for the period of the option.

- 18 The officers of Denbighshire County Council, the new Planning Authority recommended approval of Developer A's proposals. However at a meeting of the Planning Committee in January 1997 the application was refused. A second application was not supported by officers and was therefore also refused. Developer A did not appeal against these decisions.
- 19 Following this Developer A made a revised offer of £500,000 unconditional with a further £600,000 when planning permission was obtained. This was considered at the Health Authority's Board meeting on 28 January 1997 with officers reporting that a revised offer had been received substantially below the original offer. The offer was rejected. Developer A submitted a further unconditional offer of £550,000 on 22 May 1997 which was also rejected by the Health Authority Board.
- 20 The Health Authority retained the option fee of £10,000.

Offers from local property developer (Developer B)

- 21 On 10 February 1997 a local property developer (Developer B) made an unconditional offer of £1 million. This was during the 12 month period of Developer A's option agreement and therefore could not be formally considered. However this was the first of a series of offers made by Developer B up until the final sale of the Hospital.
- 22 The Health Authority felt that the financial status of Developer B was unclear and that a Banker's letter submitted in support of his offer was inconclusive. Officers were never provided with details of Developer B's capacity to undertake a project of this size. Officers have informed us that for these reasons neither this offer nor any of the subsequent offers made were pursued.

Second agreement to sell (Developer C)

- 23 In February 1997 officers entered into informal discussions with another development company (Developer C) regarding a scheme which potentially would provide additional jobs. The Health Authority felt that this was more in the public interest. In July 1997 Developer C offered £1.25 million for the purchase of the Hospital site and the adjoining site of Gwynfryn, a facility operated by the Clwydian Community Care NHS Trust. The offer included re-provision of that facility at another location, the cost of which was initially estimated at £600,000 to £800,000. The offer was conditional on Developer C being given an option agreement for six months. The proposal for the site was to build a plastics and slate waste recycling facility together with a mix of commercial and housing developments. In all some 300 jobs were planned to be created.

- 24 At its meeting on 1 July 1997 the Health Authority resolved to enter into a six month option agreement with Developer C giving them the option to purchase the property within 20 working days of 31 January 1998. Again an option fee of 1% of the sale price, £12,500 was payable. Again this did not cover the outgoings on the site. At the request of Developer C the Health Authority extended the initial option for a further six weeks to allow the company to pursue its planning application with Denbighshire County Council.
- 25 Prior to the planning application being determined Developer C signed the option notice, which was effectively the contract to purchase, in March 1998. No deposit was paid at this stage, which according to the Authority's solicitors is normal practice for this type of property deal. However the Authority's property agents and the National Assembly's Chief Estates Surveyor both expressed the view that a 5 to 10% deposit should have been paid by the company. Developer C subsequently failed to complete by the due date of 15 April 1998. In May 1998 the officers of Denbighshire County Council recommended refusal of the planning application against which Developer C commenced appeal proceedings.
- 26 In the period from May to August 1998 officers continued to negotiate with Developer C in an attempt to secure completion of the contract or secure a substantial deposit from the company pending determination of the planning appeal. Officers ceased negotiation with Developer C on 25 August 1998 on the instructions of the Director of NHS Wales.
- 27 The Authority is currently pursuing a case for non-performance of contract against Developer C.

Expression of interest by a local public school

- 28 During Developer C's option period a local public school expressed an interest in the site. The Board Secretary wrote to the school stating that as the Health Authority was in an option period with a developer it was unable to negotiate with other parties. However he stated that if the option period did not proceed to a sale the school would be notified. The Board Secretary asked the property agents to notify the school in this event. Unfortunately this was overlooked by the property agents, however the fact that the site was available once more for purchase was widely advertised and was well known in the local area. No further contact was made by the school prior to the final sale.

Sale of the site

- 29 The site was remarketed in autumn 1998 with the Welsh Office taking more involvement in the process. At the beginning of December 1998 six expressions of interest were received. Of these, three were considered as being worthy of serious consideration and tenders were received from the three parties:
- £160,000 plus clawback
 - £175,000 plus clawback
 - £302,000.
- 30 The tender for £302,000 was rejected as the contractor had a poor financial record. The offer of £160,000 was submitted by Developer B and was rejected for the reasons given in paragraph 22. The Health Authority selected the offer received from Brockhall Village Limited as they had experience of developing a similar site in Lancashire and had good references in support of this. This was an unconditional offer of £175,000 plus clawback representing a 50% share of net profits for three years following the sale and a 10% share for a further seven years.
- 31 The Welsh Office sought specialist legal advice on the contract of sale. In their report the legal advisors stated that generally clawback is often negotiated on a gross proceeds of sale basis, so that any developer will be obliged to pay any costs of securing development value out of its share of gross proceeds of sale. However given that the site was in need of significant remedial work it was agreed that any clawback would be on the basis of net profits and not gross sale proceeds. Restrictions were placed within the contract for sale whereby no subsequent disposal within a ten year period can be registered at HM Land Registry without the consent of the Secretary of State. This was to provide safeguards that Brockhall Village Limited would comply with the clawback provisions.
- 32 As a result of negotiations with the company regarding responsibility for easements in respect of some adjoining properties the sale price was reduced to £155,000 but completion was brought forward from September 1999 to 30 April 1999.
- 33 The new Chair of the Authority declared an interest in the matter and did not participate in the Health Authority board discussions regarding the sale to Brockhall Village Limited. On 12 March 1999 the Chair wrote to the Parliamentary Under-Secretary of State expressing that in her view the selling price was too low and put forward an alternative course of action involving a multi agency approach to disposal of the site. The Parliamentary Under-Secretary of State decided against accepting this suggestion.

- 34 On 27 April 1999 an offer of £250,000 plus clawback was received from Developer A. This offer was not considered by the Authority on the instruction of the Parliamentary Under-Secretary of State as it was held to have been received outside the established timetable for bids and that to pursue it would jeopardise the conclusion of the sale to Brockhall Village Limited.
- 35 At its Board meeting on 27 April 1999 the Health Authority resolved to sell the site to Brockhall Village Limited for £155,000 plus clawback with the agreement of the Secretary of State for Wales.

Adherence to guidance and good practice

- Land Transaction Handbook
- Estatecode volume 2
- Standing Financial Instructions
- Reporting to the Health Authority Board

The current guidance on disposal of surplus properties needs to be updated and consolidated by the National Assembly for Wales.

Officers of the Health Authority were not consistent in their application of the main guidance on the disposal of surplus properties issued by the Department of Health and adopted by the Welsh Office. The Authority did not fully comply with several requirements, in particular it did not:

- *Compile a comprehensive option appraisal for the site which fully considered all options.*
- *Obtain a statement from the Planning Authority regarding the type of development for the site that it would have found acceptable.*
- *Fully explore the option of undertaking partial demolition of the site in order to increase its marketability.*
- *Take action to remedy the deterioration of the site despite being advised on several occasions by Clwydian Community Care NHS Trust's Estates Officers that remedial work was necessary and that the Authority was in risk of not fulfilling its obligations under the Listed Building legislation. Deterioration of the property contributed to the difficulty of selling the site and securing a higher price.*

Land Transaction Handbook

36 The Guidance to be followed is contained in the Land Transaction Handbook (the Handbook) issued by the Department of Health in 1984 and is written for the NHS in England. The guidance needs updating and consolidating. The Handbook does not cover all aspects of the disposal process, for example:

- it does not provide guidance on the appointment of legal advisors to ensure that relevant expertise is available to Health Authorities
- nor does it provide guidance on the appointment of planning consultants which could be viewed as an expensive option by Health Authorities.

- 37 Health Authority officers stated that they were aware of the guidance contained in the Handbook. In addition they were relying on the advice of Clwydian Community Care NHS Trust's Estates Officers who were experienced in applying the guidance. The Estates Officers were familiar with the guidance but were not fully involved throughout the disposal process.

General principle

- 38 The guidance states "The guiding principle is that Health Authorities should seek to realise the full market price in order that this may be re-used to the maximum benefit of the service and its patients." The Health Authority's aim was "...to achieve a disposal that would provide a major user who would effect economic benefits for Denbigh and the Vale of Clwyd." Securing the highest price whilst being one of the main considerations was not the only guiding principle followed by the Health Authority. Emphasis was also given to collaborating with other organisations to consider the wider social and economic implications of the disposal.

Forward planning

- 39 The guidance states that Health Authorities should examine possible options as soon as a provisional decision is taken to terminate the NHS function. The guidance states that forward planning is important to reduce expenditure on maintenance and security. The shorter the time a property is empty the less the expenditure on security and maintenance. North Wales Hospital was empty for three and a half years and costs of £9,000 were incurred on ground maintenance and £309,000 on security.
- 40 A clear documented strategy for disposal was not formulated.

Option appraisal

- 41 An option appraisal was not compiled when the marketing strategy was devised. The only option presented to the Board was that of selling the whole site which was in line with the advice given by the Authority's professional advisors. The option of selling the site on a piecemeal basis was not fully explored, for example a District Valuers valuation for individual elements of the site was not obtained. The Land Authority for Wales produced a report in 1994 on selling the site piecemeal should it not be possible to sell the site as a whole. The report was questioned in a number of respects by the Local Authority as being difficult to achieve in the light of existing planning policies. Consequently the report was not pursued with the Land Authority or its successor the Welsh Development Agency.

Planning clarification

- 42 The Handbook states that planning clarification can take up to two years if an appeal is necessary so should therefore be made as soon as possible. Officers of the Health Authority had regular contact with Planning Officers. The Health Authority did not seek planning clarification on the advice of its professional advisors, one of the reasons being the time it would take. The guidance states "...the planning potential of the land and buildings must be clarified in order to obtain the best market price." In consultation with the Local Authorities a planning brief was prepared but this did not identify potential uses for the site which the Planning Authority would have found acceptable. The Health Authority should have sought a statement from the Local Authorities regarding the type of development that would have been looked on favourably by the Planning Committee. Although this in itself would not guarantee a successful planning application.

Listed building status

- 43 Consultations with CADW were conducted through the conservation officer of Clwyd County Council and led to a partial demolition programme. The Health Authority did not directly consult with CADW on the possibility of delisting part of the site or objecting against the revised listing status as they had been advised to do by their property agents.

Partial demolition

- 44 'Consideration should be given to demolition or partial demolition of buildings when this will enhance the overall value of the site or increase its marketability.' A planning application to Glyndwr District Council for partial demolition was not submitted until January 1996 and was subsequently withdrawn in April 1996 as it was felt that it could interfere with the progression of Developer A's offer. This option was not reconsidered before remarketing the site in autumn 1998.

Establish right to dispose of property

- 45 The Handbook states that when a property becomes surplus to requirements the Health Authority's legal advisor should be asked to check that there is no provision in the appropriate title deeds, conveyances, trust deeds etc which may affect the disposal of the property. As late as 1996 it was found that the Health Authority did not have a composite title registered with the Land Registry. Had the guidance been followed the need to register title would have been identified sooner. This could have potentially delayed any sale, but in practice it did not.

Safeguarding premises awaiting disposal

- 46 The Handbook states "Premises awaiting disposal are capital assets the value of which can only be fully realised if they are maintained in good general and weatherproof order." The responsibility for making suitable arrangements lies with the Health Authority. The Handbook goes on to say "It is most important that empty properties are regularly inspected so that damage especially that which might lead to serious deterioration is reported on and remedied quickly."
- 47 At the time of closure professional advice was that the site was weatherproof and causing few problems. As part of a service level agreement with the Health Authority the site was inspected regularly by Clwydian Community Care NHS Trust's Estates Officers and from January 1997 onwards the Estates Officers provided advice on several occasions to officers of the Health Authority:
- 28 January 1997 concerns were raised regarding the deterioration of some of the engineering services.
 - 7 April 1997 they stated that many areas in the hospital where roofs were leaking were causing damage including the chapel which had been damaged in a recent storm.
 - 6 December 1997 at the request of the Health Authority a condition report was compiled on the site. This detailed serious water penetration to the buildings, raised concerns regarding the spread of dry rot through the woodwork and stated that there had been six serious water leaks over the past two years. Costs were quoted for some remedial work, £2,000 for minor works, £5,000 for cleaning and carrying out repairs to single storey height and £87,500 to £152,500 to undertake major works on structural damage.
 - 28 May 1998 serious concern was again raised regarding water penetration and they reminded the Health Authority of its obligations under the Listing Building legislation.
 - 21 July 1998 concern was expressed regarding the electrics in the building and again the damage caused by water damage.
- 48 In September 1998 the Chief Executive wrote to the Welsh Office's Health Service and Management Division advising that the Health Authority had received advice from their Estates advisors that minimum maintenance work of £50,000 needed to be undertaken. He stated that the Health Authority would be reluctant to spend the money without Welsh Office support and an assurance that any money spent would be reimbursed.
- 49 In October 1998 the Welsh Office responded to the request asking that the Health Authority's Estates advisors prepare a photographic survey to demonstrate the continuing deterioration in the property. They stated that this was needed before a decision could be made on funding maintenance works.

- 50 The Estates advisors reported the results of their survey on 3 November 1998 raising concerns again regarding water penetration and the spread of dry rot. This identified the need for minimum maintenance work of £60,000 to halt deterioration in the buildings.
- 51 On 18 November 1998 the Director of the Welsh Office Health Department wrote to the Chief Executive expressing concern regarding the Health Authority's decision to reduce the level of maintenance on the site and consequent significant deterioration in the fabric of the buildings. He asked for justification of the decision and details of what the Health Authority intended to do to ensure that the Secretary of State's responsibilities for the listed buildings were properly discharged.
- 52 The Chief Executive explained why the Health Authority had decided not to commit funds to maintaining the site in his response on 18 February 1999. In it he states "Given this context and the overall financial restraints under which the NHS in Wales is currently operating, the Health Authority did not regard it appropriate to authorise large scale maintenance expenditure on a site which showed every indication of proceeding to disposal." However he did not indicate any action proposed by the Health Authority should the sale to Brockhall Village Limited have fallen through.
- 53 In the opinion of the property agent and the Welsh Office deterioration of the property contributed to the difficulty of selling the site and obtaining a higher price. The risk of the Local Planning Authority serving a listed building repair notice with the consequent cost implications contributed to the Health Authority and Welsh Office wanting to dispose of the site before it became a bigger financial liability.

Recommendations

- R1 The National Assembly for Wales should consider this report in the context of its review of NHS estate, in particular the need for reviewing and issuing new guidance on disposal of surplus properties.*
- R2 Such guidance should ideally cover the appointment of legal advisors, and give consideration to the appointment of specialist firms for NHS Wales in line with approach adopted for medical negligence cases.*
- R3 The guidance should also consider the appointment of planning consultants, and again the scope for appointing a specialist firm for NHS Wales to undertake an overall review of the planning potential/issues of surplus NHS properties.*
- R4 With the increasing emphasis on Health Authorities working in partnership with other organisations the definition of what constitutes maximum benefit to the Health Service needs to be developed within the guidance.*

Recommendations (continued)

- R5 *All extant guidance should be followed wherever possible. The reasons for any deviations should be fully documented and reported to the Health Authority Board.*
- R6 *Appropriate budget provisions should be made to allow adequate maintenance of surplus properties to ensure that the optimum strategy for disposal can be realised.*
- R7 *Quarterly inspection reports of the condition of properties awaiting disposal should be copied to the National Assembly Estates Section.*

Estatecode volume 2

- 54 As this was not published by the Welsh Office until 1997 the Health Authority could not have been expected to comply in the early period of the sale. Officers obtained a copy in early 1998 and were therefore aware of the guidance it contained regarding the sale of listed buildings. We have only considered that part of the guidance that it would be reasonable to expect the Health Authority and Welsh Office to have followed.

Asset or liability?

- 55 It should be noted that the guidance recognises that some historic buildings may have a negative value. The guidance goes on to say that if a negative value arises from disrepair then it may be preferable to put the buildings into a reasonable state of structural repair before sale to create a positive value. Whilst this was not true of North Wales Hospital when the site was first marketed the deterioration of the site and the failure to take remedial action contributed to the decrease in the marketability of the site (see paragraphs 46 to 53).

Purchaser's financial credentials

- 56 The Estatecode guidance states "The disposal process must be managed responsibly. Health authorities should ensure that as far as possible the future security and care of historic buildings is safeguarded." It refers to situations where financially unsound purchasers have failed to maintain listed buildings after disposal.

- 57 The Welsh Office commissioned a leading firm of accountants to undertake a financial appraisal of Brockhall Village Limited. Whilst the consultants assessed Brockhall Village Limited as average risk for the sector, they made a number of recommendations regarding further checks which should be undertaken prior to entering into a contract. Officials decided that these additional checks were unnecessary because of the reasons set out below and the fact that at this stage of the process a successful sale was the overriding priority:
- professional advice received stated that the potential for an improved offer was poor
 - the quality and effectiveness of safeguards established within the contract for sale
 - the track record of the company in the development of a similar property in Lancashire, supported by correspondence from the North West Regional Office of the NHS Executive
 - a Dunn and Bradstreet evaluation which provided additional assurance
 - the full cash purchase price of £155,000 was to be payable on exchange rather than on completion which is normal practice.

Standing Financial Instructions

- 58 The Health Authority's Standing Financial Instructions (SFIs) require the Director of Finance to:
- prepare detailed procedures for disposal of assets
 - determine and advise on the estimated market value of the item, taking account of professional advice where appropriate.
- 59 Despite this the Health Authority does not have detailed procedures for disposal of assets, instead a disposal strategy should be agreed for each individual sale. Based on the current guidance the Director of Finance should compile procedures for disposal of assets which can be incorporated into individual disposal strategies.
- 60 The estimated market value of the site was not determined although the property agents were advising prospective purchasers initially that offers in the region of £3 million would be considered. However the District Valuer was not asked to provide an estimated market value for the site prior to it being marketed. All offers which the Authority accepted were supported by a disposal valuation from the District Valuer (see paragraphs 78 to 80).

Recommendation

- R8 *Detailed procedures for the disposal of property should be drawn up by the Health Authority based on all relevant guidance and within the context of the corporate governance framework.*

Reporting to the Health Authority Board

- 61 It is not clear that all relevant facts were always fully reported to the Board, in particular a revised offer received from Developer A.
- 62 Whilst progress reports were made regularly to the Board they were generally verbal and Board minutes were not always very comprehensive. Whilst Board approval was sought for entering into options with the two developers and subsequently for selling to Brockhall Village Limited, it is not clear that all relevant facts were fully reported to the Board:
- When the revised offer made by Developer A of £500,000 unconditional and a further £600,000 when planning permission was gained was reported to the Board on 28 January 1997 the minutes record that "...a revised offer substantially below the initial offer had been received..." However the initial offer was £1 million whereas the revised offer was potentially for £1.1 million. This offer was rejected.
 - It does not appear that all offers received were submitted for consideration by the Board eg offers from Developer B.

Recommendations

- R9 The detailed procedures for the disposal of assets should cover reporting requirements particularly to the Board.*
- R10 Written reports on disposal of land and buildings should always be presented to the Board.*
- R11 All offers and expressions of interest should be fully reported to the Board to protect officers from allegations of bias.*
- R12 Minutes of Board meetings should be more comprehensive and informative.*

Professional advice

- Welsh Office/National Assembly
- Legal advice
- Property agents
- Clwydian Community Care NHS Trust Estates Officers
- District Valuer

The Welsh Office's (now National Assembly) role in the disposal process was not clear and needs to be clarified in future by considering:

- *whether it should take full responsibility with support from the respective Health Authorities*
- *taking a more active role throughout the disposal process*
- *establishing more robust monitoring procedures.*

From April 1994 the Health Authority did not have any in-house estate expertise and was therefore reliant on external advice. Despite this the Health Authority did not always seek professional advice and in certain cases chose not to follow it. In particular the advice of the Welsh Office's Chief Estates Surveyor and its property agent regarding the financial standing of Developer C was not followed.

Welsh Office/National Assembly

- 63 The Welsh Office's (now National Assembly) role in the disposal of properties is unclear. On one hand the Land Transaction Handbook places all responsibility on Health Authorities, albeit as agents for the Secretary of State, but on the other hand Health Authorities have been invited to use Welsh Office professional advisors ie the Chief Estates Surveyor and Health Services Management Division. Progress on disposals is not monitored closely, Health Authorities are telephoned on a monthly basis for a progress update. Unless invited the officers of the National Assembly only become involved if they perceive that there is a problem. This lack of clarity is demonstrated in the way the issue of maintaining the site was managed (see paragraphs 46 to 53).
- 64 The Health Authority did not seek to involve the Welsh Office in the disposal process. The view of officers was that as they were given the task of disposing of surplus properties it was up to them to undertake the task. The Welsh Office sent a letter to Health Authorities in June 1994 inviting them to use the Estates Division to provide professional input for disposals which was available free of charge. The Health Authority did not act upon this. National Assembly officials confirmed that generally within Wales the invitation was not taken up.

- 65 Officers of the Health Authority did not follow the advice given by the Chief Estates Surveyor and property agent regarding the financial standing of Developer C and entered into an option agreement with them. Indeed a meeting with the Chief Estates Officer and property agents to discuss the offer was cancelled at short notice as the option agreement had already been signed.
- 66 The Health Authority officers also concluded that the results of the financial checks undertaken by the Property Agent on Developer C did not provide adequate assurance that the company had the required resources to undertake the development project proposed. The Chief Executive instead placed reliance on the fact that Developer C's founder and major shareholder had a substantial personal fortune. Whether this was the case or not was not relevant in terms of assessing the financial standing of the company, as the personal finances of shareholders, major or otherwise are quite separate from that of a company.

Legal advice

- 67 The Health Authority uses a local firm of solicitors to handle all of its property deals. The Welsh Office sought further legal advice on clawback arrangements to supplement and support the local solicitors due to the complexity of the agreement. Legal advice appears to have been sought and followed appropriately.
- 68 Whilst there is no indication that the local solicitor was unable to provide adequate legal advice, consideration should be given to appointing specialist solicitors when dealing with complex sales such as North Wales Hospital.

Property agents

- 69 The Handbook states that the District Valuer should be asked to advise on the most suitable agents to handle a particular sale having regard to the nature of the property concerned. This was not done nor was the District Valuer on the panel that selected the agent.
- 70 The guidance advises that when more than one firm is considered appropriate the Health Authority should obtain estimates of the cost of handling the transaction to secure the most favourable terms. Property agents were appointed following a tender process in accordance with the guidance. The firm that submitted the lowest tender was appointed but they were not the preferred choice in terms of the service offered. However as their bid was £20,000 lower the Health Authority felt that they could not justify going for a more expensive agent, particularly as the chosen firm was an international property agent with an accepted track record. Given the size and complexity of the site equal emphasis could have been placed on service quality in the choice of property agent.

- 71 In general terms Health Authority officers felt that the advice provided was satisfactory. However there was a short period when changes in personnel within the property agents led to questions about their suitability being raised. However changes were made and the Health Authority felt there was no need to seek alternative agents.
- 72 Despite this the advice given by the agent was not always followed:
- In June 1995 the agent advised the Health Authority to object to the revised listed status of the site by CADW. This was not done.
 - The agent recommended that the unconditional offer of £1 million from Developer B should be taken seriously. At this time the Health Authority were unable to pursue the offer as they were in an option period with Developer A. However, the seriousness of any subsequent offers from Developer B could have been tested by drawing up a contract and securing a 10% deposit on exchange of contracts. This was not done.
 - As stated in paragraph 65 the agent's advice regarding the financial standing of the Developer C was also not followed prior to the Health Authority entering into an option agreement with them.
- 73 There were instances when the agent's advice was not sought in key stages of the process:
- The agent's advice was not sought on the revised offer of £500,000 plus a further £600,000 from Developer A.
 - The agents were not involved in negotiations with Developer C. The Chief Executive led all negotiations.
- 74 The reason given by Health Authority officers is that it was the role of the agents to provide advice but that this did not necessarily mean that they would be invited to all meetings. Officers stated that the views of the agents were well known to them at each stage of the disposal process.
- 75 The property agent's main contact is of the view that he was on the margin of the negotiations with Developer C and had to ask whether advice was required rather than vice versa. He stated that it is normal practice, particularly with clients not experienced in property matters, for the agent to take an active part in negotiations. Had the agent participated in all negotiations the Health Authority would have incurred no additional cost under the contract.

Clwydian Community Care NHS Trust Estates Officers

- 76 As stated in paragraphs 46 to 53 the advice of the Estates Officers was not followed regarding the need to undertake remedial work at the site.
- 77 Whilst there was input from the Trust's Estates Department in the early stages of the disposal process it was excluded from the deal with Developer C.

District Valuer

- 78 The Handbook states that "At an early stage the District Valuer should be asked to provide a report giving an appraisal of the surplus land with the aim of securing the best possible market price. The report should contain details of the planning prospects and any action the District Valuer considers necessary to realise the full potential of the site eg a planning application. The report should also recommend, where appropriate, marketing agents and give an indication of what the property may realise." A preliminary report was not commissioned from the District Valuer.
- 79 "All offers, expressions of interest etc, should be copied to the District Valuer to ensure that he is fully informed." Although offers the Health Authority intended to accept were passed to the District Valuer for his advice other offers were not. For those offers passed to the District Valuer his general advice was that if they were the offers received they probably represented the market value of the property at that time.
- 80 The District Valuer was asked for his advice on the final offer from Brockhall Village Limited, he advised "In view of the nature and history of the property it is unlikely that any potential purchaser would pay in excess of £150,000 or thereabouts on a wholly unconditional basis at this time." When requesting his advice about the site to be disposed the Health Authority omitted Parc y Twll, a small adjoining property which formed part of the sale. The District Valuer has since confirmed that had Parc y Twll been included in the disposal valuation for the Hospital its impact on his advice for the overall valuation would have been minimal.

Recommendations

R13 In its review of NHS estates the National Assembly will wish to clarify its role in the disposal process, considering:

- whether it should take full responsibility supported by the respective Health Authorities*
- taking a more active role throughout the disposal process including determination of the marketing strategy*
- establishing formal monitoring procedures and becoming involved when problems first arise.*

R14 Professional advice should be sought and properly considered throughout the disposal process.

R15 Should the Health Authority choose not to follow professional advice the reasons for doing so should be fully documented and reported to the Board.

Recommendations (continued)

- R16 The Health Authority should seek professional input from the National Assembly's Estates Division, particularly in respect of complex sales.*
- R17 Property agents should be appointed on the basis of both cost and quality, where additional expenditure is felt to be justified a recommendation should be made to the Board for approval.*
- R18 The financial standing of potential purchasers should be assessed on the basis of relevant evidence and professional advice.*
- R19 For complex sales consideration should be given to appointing a specialist firm of solicitors.*

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Summary of recommendations

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Plan of North Wales Hospital site

Summary of recommendations

Recommendations

- R1 The National Assembly for Wales should consider this report in the context of its review of NHS estate, in particular the need for reviewing and issuing new guidance on disposal of surplus properties.*
- R2 Such guidance should ideally cover the appointment of legal advisors, and give consideration to the appointment of specialist firms for NHS Wales in line with approach adopted for medical negligence cases.*
- R3 The guidance should also consider the appointment of planning consultants, and again the scope for appointing a specialist firm for NHS Wales to undertake an overall review of the planning potential/issues of surplus NHS properties.*
- R4 With the increasing emphasis on Health Authorities working in partnership with other organisations the definition of what constitutes maximum benefit to the Health Service needs to be developed within the guidance.*
- R5 All extant guidance should be followed wherever possible. The reasons for any deviations should be fully documented and reported to the Health Authority Board.*
- R6 Appropriate budget provisions should be made to allow adequate maintenance of surplus properties to ensure that the optimum strategy for disposal can be realised.*
- R7 Quarterly inspection reports of the condition of properties awaiting disposal should be copied to the National Assembly Estates Section.*
- R8 Detailed procedures for the disposal of property should be drawn up by the Health Authority based on all relevant guidance and within the context of the corporate governance framework.*
- R9 The detailed procedures for the disposal of assets should cover reporting requirements particularly to the Board.*
- R10 Written reports on disposal of land and buildings should always be presented to the Board.*

Recommendations (continued)

- R11 All offers and expressions of interest should be fully reported to the Board to protect officers from allegations of bias.*
- R12 Minutes of Board meetings should be more comprehensive and informative.*
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Plan of North Wales Hospital site

See attached.



