



apse Southern - Future Focus Seminar 2018

Loans and Investments



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WALKER
MORRIS



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Introduction

Walker Morris - what we do and who we act for

Partners and fee earners in the Real Estate Team

8

Partners

and

30

Fee Earners

Recognised by Best Lawyers

Best Lawyers

Ranked by Chambers as

*national
leaders*

outside London



Practice Ranking:

Chambers: 1

Legal 500: 1



Winner of the Property Law Firm of the Year - Insider Property Awards 2017

91%

of

Walker Morris partners *are now*

recommended in either Chambers or Legal 500.

54%

of our

Top 50 clients

have been with us for

10 years ^{OR} more

£2.5bn

Total value of significant *real estate transactions* for year ending 17/18

Property Investment



The Legal Framework

Spend/Borrow/Lend - Buy & Sell Land

- Local Government Act 1972 Part 7
- LGHA1989 Part 4
- Localism Act 2011 s1 - GPC
- Local Government Act 2003 s1 power to borrow

“A local authority may borrow money:

(a) for any purpose relevant to its functions under any enactment, or

*(b) for the purposes of the **prudent management** of its financial affairs”*

Invest - Local Government Act 2003

s 12 Power to invest

A local authority may invest:

- (a) for any purpose relevant to its functions under any enactment, or*
- (b) for the purposes of the **prudent management** of its financial affairs*

State Aid, Procurement & Judicial Review

- Most forms of investment can amount to state aid - loans, local taxation, guaranties, land etc.
- Procuring investment outcomes via competition invokes procurement regulations and challenge risk
- Unlawful or unreasonable investment decisions give rise to JR risk

Why are Local Authorities Investing?



- Cheap loans from the PWLB
- To buy or invest in assets which generate a higher yield to produce net income
- Stimulate economy (+ business rates)
- To support revenue budgets and fund services

Property Investment - Example

Spelthorne Borough Council borrowed £377M to buy BP's Sunbury on Thames Office park

50 year PWLB loans at 0.83% and 2.26% Investment provided:

- Revenue to support delivery of local services
- Economic growth
- Increased business rates - 100% retention by 2020

Against gross authority revenue and assets of £88M and £74M

Public Sector Borrowing - England



£1.4bn borrowed to acquire property 2016-2017

£65.3bn Total outstanding loans issued by the Public Works Loan Board - 2017

10% reduction in local authority revenue expenditure 2010-2017

Investment is not without risk

Property markets can fluctuate

Brexit

Challenge risk:

- Bournemouth Borough Council facing a challenge from private sector hotel developers Peel - April 2018
- Challenged on grounds of unlawfulness, state aid and procurement breaches and

failure to follow government guidance

Guidance and Best Practice



- LGA 2003:
- s15 Authorities must have regard to guidance issued by SoS
- s21 Authorities must follow the accounting practices required by SoS
- Treasury guidance
- CIPFA mandatory accounting standards

DCLG Guidance 2018 under LGA 2003

Key Principles:

- Transparency and Democratic Accountability
- Contribution
- Use of Indicators
- Security, Liquidity... and then Yield
- Proportionality
- Capacity Skills and Culture



Transparency and Democratic Accountability

- At least one Investment Strategy
- Approved by full Council prior to the start of the financial year
- Published on the website

Contribution



What is the financial contribution that the investment activity will deliver to support the revenue budget of the Council

Harder to demonstrate if investment is outside the area...

Use of Indicators

- Investment Strategy must contain indicators to **measure the risk** of the investment against the return
- Consistent indicators - year on year
- Clear so that performance can be measured against other authorities - **prudent, reasonable decisions**
- Opportunity cost

Security Liquidity and then Yield



- Security - is the capital investment **safe**?
- Liquidity - how easily/quickly can we **get our investment funds back**?
- Once these are satisfied, then look at whether there is a net investment return or **yield**

Proportionality

- Is the revenue budget exposed to disproportionate risk if the investment fails?
- **Contingency** if the investment return falls short
- Opportunity cost
- **Assessment of the risk** of dependence on yield over the life cycle of the financial plan

Capacity Skills and Culture

- Can the Members and Statutory Officers make informed investment decisions in the context of the authority's strategic objectives and risk profile?
- Governance structures to ensure accountability & responsibility

Investment Structures



Investment Structures

Development Company

Development Finance

Investment Purchase

Procured Investment

Take Home Points

- DCLG Guidance - key principles focus on prudence before financial return
- Take professional advice to support investment decisions
- Investment transaction structures can be complex - we can help!
- Most investment can amount to State Aid

Contact us



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