



Report by the  
Comptroller and  
Auditor General

# Sale of Herstmonceux Castle

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Comptroller and Auditor General

National Audit Office  
2 April 1990

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# Report

1. The Secretary of State for Education and Science informed the House of Commons in November 1986 that he had given the Science and Engineering Research Council approval in principle for the proposed move of the Royal Greenwich Observatory from its site at Herstmonceux to Cambridge. Subject to Parliamentary approval of the relevant Estimates, the expenses of the move and of providing the necessary new buildings at Cambridge were to be met from the sale of Herstmonceux Castle, a site comprising some 370 acres of gardens, grounds and buildings.

## Sale arrangements

2. Instructions for the sale of Herstmonceux were placed by the Science and Engineering Research Council with a London based estate agent of international standing. Given the likely international interest, the agreed sales strategy included the circulation of information on the property to the agent's overseas offices, with an extensive publicity programme both in the United Kingdom and overseas. Personal contact with individual clients thought likely to be interested included a number who had contacted the Council when the move of the RGO from the Herstmonceux site had been announced.

3. The sale was to be by private treaty. Accordingly the agent was under no obligation to invite formal tenders, as would have been the case under the normal conventions for government contracts.

4. The property was placed on the open market in the first week of May 1988, and it was announced that a price of £6 million to £10 million was expected. A vigorous promotional campaign from May to July 1988 allowed the agent to identify interested parties and by mid-July the professional judgement of the agent was that the optimum moment had arrived to ask these parties for best and final offers. Offers for sale, supported by appropriate financial references, were therefore invited on 18 July 1988 from some thirty potential buyers who had expressed an interest. The invitation asked for offers to be submitted by 3 August 1988, and confirmed that the Research Council would not be bound to accept the highest or any other offer.

5. Eight firm offers, including one from overseas, were received by the due date. The highest offer of £9.25 million from an American organisation was not proceeded with because the tenderer did not provide the required banking references and financial status could not therefore be demonstrated. The next highest offer of £8.1 million was then considered. Before this offer was accepted a second underbidder, on being advised by telephone that his best and final offer had been unsuccessful, told the estate agent that he was prepared to increase his bid to £10 million though at no time did he provide the requisite financial references. The £8.1 million offer was accepted in principle, subject to contract, on 18 August 1988.

6. On 22 August the second underbidder offered an earmarked £7 million to be used as an additional United Kingdom contribution to the European Space Agency Science Programme, in which he claimed an interest through his proposed use of an ESA satellite, as an addition to the £7 million he had originally offered for the estate. He was advised that an increased conditional offer could not be accepted. He then made an unconditional offer of £14 million on 27 August. This offer was rejected by the Council, on 6 September, on the grounds that they had considered the original bid in fair competition with other bids on the same basis and had already accepted a higher offer than the second underbidder's original price. Having already accepted this offer of £8.1 million, albeit subject to contract, the Research Council considered that to accept an increased offer would, in any event, amount to "gazumping"; and as a public body it could not be a party to a practice which, at that time, the Government was discouraging in the private sector. It informed the second underbidder accordingly.

7. Contracts were exchanged on the £8.1 million offer on 20 October 1988 with a two stage completion; a deposit of £810,000 was paid at the exchange of contracts and the balance of the purchase price was to be paid on completion of each stage, £5,040,000 payable on 2 May 1989 and £2,250,000 payable in 31 May 1990. In addition, on completion of the second stage the purchaser will grant to the Research Council a 15 year lease on part of the estate at a peppercorn rent.

8. The deposit of £810,000 received in 1988-89 was paid over to the Consolidated Fund. Completion of the first stage was however delayed while the purchaser finalised his financial arrangements and, with appropriate legal safeguards, the Council agreed to defer the completion date to 7 August 1989. The first stage of the sale was completed on 4 August. The total payment made was £5.233 million, comprising the original agreed sum of £5.040 million, plus £241,000 in respect of interest on the delayed payment beyond the original completion date, less £48,000 for certain other adjustments. In accordance with the sale agreement the purchaser has provided a letter of guarantee from a reputable merchant bank in respect of the availability of the completion monies for the second stage.

9. The Treasury have agreed that, subject to Parliamentary approval of the relevant Estimates, £4.287 million of the £5.233 million paid in 1989-90 may be retained by the Council to offset expenditure on the move to Cambridge (see paragraphs 22 to 23 below). The balance of £0.946 million will be surrendered to the Consolidated Fund. The £2.250 million payable in 1990-91 will also be retained by the Council to offset expenditure on the move.

10. However, the approved Estimates for 1989-90 provide only for the retention by the Council of £2.69 million instead of the £4.287 million intended. A Supplementary Estimate will therefore be required to seek Parliamentary approval to retain the balance of £1.597 million.

**Conformity with  
Treasury guidance**

11. The Treasury issued guidance dated 29 April 1988 on the disposal of land by public bodies which is designed to ensure that the best

possible prices are obtained. The guidance was received by the Council, via the Department of Education and Science, on 3 June. This was several months after the sales strategy for the estate had been agreed and one month after it had placed on the market and the conditions of sale published, but some six weeks before best and final offers for Herstmonceux had been formally invited. The Council informed the National Audit Office that they had reviewed the guidance and concluded that the action being taken in connection with the sale was consistent with the recommendations made.

12. The following paragraphs outline certain matters noted in the course of a National Audit Office examination of the sale together with a summary of the Council's responses.

**(i) Timing of sale and tender period**

13. The Treasury guidance provides that "a reasonable date" should be fixed for receiving bids and stresses the importance of vigorous marketing to secure effective competition. Vacant possession of the whole of the Herstmonceux site could not be given until the new premises at Cambridge were completed. At the time the estate agent tendered for appointment this was expected to be at the end of 1989 and they proposed that the sale should be set in hand in Spring 1989, this being the best time of the year to put properties of this kind on the market. The Castle and most of its grounds could, however, be made available in advance of the move to Cambridge in return for the early payment of the bulk of the purchase price which would have financial benefits for the Exchequer. Therefore, after the agent's appointment and detailed discussions about sales strategy, it was decided to bring forward the marketing campaign to Spring 1988, with the possibility of mounting a second campaign in Spring 1989 if a suitable purchaser was not forthcoming.

14. The Council stated that the vigorous publicity campaign, which started in May 1988, was preceded by seven months of preparation. The marketing campaign generated significant potential interest in the United Kingdom and internationally and on 18 July 1988 invitations to make best and final offers by 3 August were issued. The Council's agent advised that this 2-3 week period was an adequate and not unusual period to allow for the submission of offers and the Council followed this advice. The National Audit Office noted that the overall period allowed for the sale was longer than that provided for under tendering procedures for the sales of land by the Property Services Agency, which typically allow six to eight weeks for the submission of offers from the date on which the property is advertised.

**(ii) Planning permission**

15. In order to secure the best price the guidance provides that land which has potential for development should normally be sold with the benefit of planning permission. (The Property Services Agency, for example, would normally seek to obtain planning permission on land for disposal; and they would pursue this to the extent of taking the case

to appeal where they were reasonably confident of both success and substantially higher receipts, even if this were to delay the timing of the sale). The guidance also provides that where there are delays in resolving uncertainties over planning permission it may then be appropriate to dispose of the land before such uncertainties are resolved; but the guidance adds that in such cases "it may well be appropriate to seek to secure from the purchaser any increase in value attributable to the grant of planning permission after the disposal terms have been agreed".

16. The National Audit Office noted that the Herstmonceux property was offered for sale without planning permission and that there was no provision to "clawback" any part of any subsequent development value, even though substantial potential for development was recognised. A planning brief initially drafted by the Council's agent and approved after amendment by Wealden District Council for the benefit of prospective purchasers, and to guide future development proposals, noted possibilities which included a country house hotel, timeshare accommodation, leisure club, golf course and a range of country activities. The planning brief added that these ideas were not intended to exclude other, perhaps more imaginative and environmentally sensitive, schemes that might come forward for consideration.

17. The Council told the National Audit Office that it had considered the planning position very carefully. The Council and its agents had extensive discussions with the local planning authorities and sponsored jointly with them the preparation of a report by the English Tourist Board on potential options for the site. Its agents had drafted the planning brief taking full account of this and the local structure plan. There were three reasons why they made no attempt to secure from the purchaser any undertaking about sharing in any increase in value attributable to the grant of planning permission after the disposal. First, the planning brief gave very clear guidance as to what consents might be forthcoming. Second, potential for development of the site was strictly limited by Wealden District Council's local structure plan and their generally restrictive attitude to development. Third, in the view of the Council's agent, the approval of the planning brief provided the most effective way of securing the best market price for the estate and that any enhancement that might be possible, which could be marginal at best, would have been incapable of accurate measurement. The Council therefore considered the price of £8.1 million to be a fair one in relation to the sorts of development suggested in the planning brief and considered it unnecessary to take action to "clawback" any share in future development value.

### **(iii) Reasons for rejecting offer of £14 million**

18. The guidance emphasises the importance in negotiating sales by private treaty of ensuring that there is no moral commitment to proceed with the sale until contracts are exchanged. On the other hand, where the sale is by tender underbidders should not be invited to improve their bids. As the Herstmonceux sale was to proceed by private treaty the National Audit Office asked why, unless the Research Council

concluded that they were morally committed to accept the offer of £8.1 million, they had rejected the unconditional offer of £14 million received some two months before contracts were exchanged.

19. The second underbidder did not submit the financial references to support any of his bids, as specifically called for in the letter inviting best and final offers. The Council informed the National Audit Office that they did not consider it appropriate or necessary to press the underbidder for such references, as they were satisfied from information available to them, and the circumstances of the second underbidder's successive offers, that there were sufficient doubts as to his ability to complete at the £14 million offered as to make it inadvisable to accept it. The Council observed that, if negotiations to secure the £14 million had collapsed, they could have been forced into negotiating a sale at a substantially lower level, to the detriment of the taxpayer.

20. The Council emphasised that it had considered best and final offers in competition, and proceeded with the highest bidder who provided adequate financial references. The Council also considered that, even though the sale was by private treaty, the Treasury advice that underbidders should not be invited to improve their bids could be held to apply in this case. In the Council's view it took all proper steps to secure the best price obtainable at the time and, in particular, took proper professional advice and marketed the land with due vigour.

#### **(iv) Fairness and reasonableness of sale price**

21. Before public land and buildings are offered for sale the property must be valued by the District Valuer as a guide to setting an open market value. In April 1986 the District Valuer valued Herstmonceux at £3.25 million. In August 1988 when consulted by the Research Council on the highest original bid of £9.25 million, the District Valuer confirmed that this price was fair and reasonable. When consulted in October 1988 on the proposal to accept the then second highest bid of £8.1 million the District Valuer confirmed that this price too was fair and reasonable. The Council told the National Audit Office that the District Valuer was not informed that an unconditional offer of £14 million had also been received for the property, since the Council had concluded that the offer was not valid and had already accepted, albeit subject to contract and without consideration, the bid of £8.1 million.

#### **The move to Cambridge**

22. The original estimated costs of moving the Observatory to Cambridge amounted to £6.1 million, including £3.5 million for the cost of a new building (at 1986 prices) and £2 million for staff transfer and redundancy costs. Total estimated costs had risen to some £7 million by June 1989 of which £4.3 million was attributable to the new building. The main reasons for the increase in building costs were the imposition of VAT on construction costs (from 1 April 1989) amounting to £0.325 million and the inclusion of in-house design and management costs of £0.3 million. Increases in staff relocation costs have been partially offset by a reduction in the number of staff transferring to Cambridge.



23. The costs of the move to Cambridge, including the new building, are controlled by a group chaired by the Research Council's Finance Officer. National Audit Office examination confirmed that the costs of the move are being regularly monitored; and the Council have assured the National Audit Office that the new accommodation will be built and equipped on a scale consistent with Treasury guidelines, as it would have been if financed from voted funds.

## Conclusions

24. (a) As regards the marketing of the property, the National Audit Office concluded that the Council and their agent took all reasonable steps to market the property vigorously to likely buyers, and carefully considered the most appropriate timing for the sale (paragraphs 13 to 14).

(b) As to the consideration and selection of bids, the National Audit Office notes that the Council accepted a bid of £8.1 million subject to contract on 18 August 1988 although at that time one of the underbidders had told the agent that he was prepared to increase his bid to £10 million. The underbidder subsequently revised this tentative bid into an unconditional bid of £14 million on 27 August but the Council told the bidder that they could not accept it because they had already accepted the £8.1 million bid in accordance with the terms of the letter inviting best and final offers, and they could not be a party to gazumping. The Council had also concluded that there were sufficient doubts about the underbidder's ability to complete at these higher prices that it would be inadvisable to entertain them. The National Audit Office nevertheless believe that the higher bids should have been fully investigated, and necessary financial references sought, before the lower bid was accepted, and the question of gazumping would not then have arisen (paragraphs 5, 6, 18 to 20).

(c) As regards the fairness and reasonableness of the sale price, the National Audit Office note that the District Valuer confirmed the acceptability of the successive figures being offered; but since the Council had concluded that the underbidder's revised offers should not be pursued, and therefore did not refer them to the District Valuer, his assurance was given without knowledge of the higher offers in fact submitted (paragraph 21).

(d) On the move to Cambridge, the National Audit Office was satisfied that there are arrangements to ensure the costs involved are being regularly monitored and controlled, and that accommodation is being provided and equipped on a scale consistent with Treasury guidelines (paragraphs 22 to 23).

(e) On the question of possible future development of the property, the Council had carefully considered the position on planning permission and its agents had drawn up a planning brief but it had not obtained planning permission in advance of the sale on the advice of its professional agents. In the absence of planning permission the National Audit Office concluded that an alternative safeguard for the Council's position in terms of an appropriate "clawback" provision should have been sought (paragraphs 15 to 17).