

The **LESS TH<N** Problem



@stephenhillFP

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A lots of words about **Value**
that didn't...and still don't...
mean anything

what are other
words for
empty talk?



hot air, palaver, rhetoric,
empty words, hypocrisy, cant,
pomposity, idle talk,
lip service, deceit



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Proper Price...Best Price
Best Price for the taxpayer...High Price
Best Market Price...Highest Price
Full Market Price...Best Price
Best Possible Price...Best Price
Just Market Price...Best Price
Best Value...Best Value
Best Market Value...Pure Financial Value
Full Market Value...Highest Monetary Value
Open Market Value...Private Market Value
Best Market Value...Highest Financial Offer
Market Value...Maximum Capital Receipt
Most Cash...Quick Buck

MARKET VALUE

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Best Outcomes in respect of the objectives of HCA
Best Possible Outcomes for the Community
Best Value for Our Community
Best Value for Public Assets
Best Value for the public sector, as well as ensuring proper accounting and responsibility
Best Value taking wider considerations
Wider Public Benefit...Benefit to the community
Wider than Market Consideration
Greatest Benefit...Wider public interest
Public Benefit...Public benefit for public assets
Social Value...Community benefit...Social outcomes
Public use...Better regeneration outputs
Social Value...Value for money...Undervalue

LESS THAN MARKET VALUE

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Words... from whom?

- **January 2008 Commons Committee**
Discussion on ss.10 & 50 of the Housing Act 1988
[HCA] Homes England's powers to
- Minister of Housing & Planning
MPs with local government
- **FORTY FOUR** attendees
economic objectives... environmental &
from "Best Consideration"... rather than
understanding... what they wanted it to mean...
- The... Committee that councils could
... wanted...
...em...
...er than it looks

**BEST CONSIDERATION
REASONABLY OBTAINABLE**

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RICS Land & Society Commission 2011

A well managed disposal of public land – 'strategic architecture'

The planned disposal is fully consistent with the council's overall strategies, policies and programmes, especially its Local Plan and Asset Management Plan.

'Best consideration' and 'less than best consideration' disposals, should always consider social, economic and environmental objectives alongside the organisation's approved financial objectives, reflecting the impact of the National Planning Policy Framework and local planning policies on the use of the asset.



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Local Government Act 1972

S.123 Disposal of land by principal councils.

(1)...a council may dispose of land held by them **in any manner they wish.**

(2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for **a consideration less than the best that can reasonably be obtained.**

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Local Government Act 2000

S.2 Promotion of well-being

(1) Every local authority are to have regard to the interests of persons who they consider is likely to be affected by the exercise of their functions in relation to the objects...

(a) ...S
(2) The power conferred by section 1(1) shall not be exercised in relation to or for the purpose of...
(a) the whole or any part of a local authority's area, or
(b) all or any persons resident or present in a local authority's area.

**Repealed in 2011 Localism Act -
except in Wales, where in 2015, all
legislation and policy was made to pass
a 'wellbeing of future generations' test**

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General Consent 2003

Disposals at an undervalue to reflect social, economic and environmental wellbeing objectives that were outside the scope of a **land use** planning system

- Council disposals need to be for the most valuable use allowed for that site... **Unrestricted Value**
- This may be more than the **actual** purpose for which the site is being sold... **Restricted Value**
- If the difference is **less than £2m**, then the General Consent allows the sale
- If the difference is **more than £2m**, then a specific MHCLG approval will be needed
- **'Wellbeing objectives'** and **'Voluntary conditions'** can both affect the difference...in different ways.
- Assumes there is always a **difference**...hence...

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The **LESSTHAN** Problem

- Doesn't apply to 1985 Housing Act land
- Proposes the 'wellbeing test'
- Meanings incomplete or by inference, esp. 'voluntary conditions'
- **Obsolete** – interpretation now affected by later legislation
- **Negative language encourages caution:**
 - Disposal...Less than...Undervalue**
...sounds like...
 - Loss...giving away... Worth...less**
- Based on sound valuation principles...
but became confused with the need to raise the most money...
that's a **political choice**, **not** a valuation issue

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The Localism Act 2011

The well-being power in the Local Government Act 2000 was repealed for England...but retained for Wales.

S.1 General Power of Competence

(1) **...a local authority has power to do anything that individuals generally may do.**

Part 1...applies a general power of competence to local authorities in England...i.e. all councils in England, including and 'eligible' town and parish councils.

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Localism Act 2011

S.88 Land of community value (ACV)

(1)...a building or other land in a local authority's area is land of community value if in the opinion of the authority—

(a) an actual current use of the building or other land... **furtheres the social wellbeing or social interests of the local community**

Unclear and restrictive definition of ACV, which potentially excludes the 'economic and environmental' wellbeing or interests of the local community which would need to be considered in:

- Meeting NPPF's definition of sustainable development
- Selecting the appropriate basis of valuation

When is any land use ever just 'social'? Created the need for a special valuation approach, which the RICS Commission had argued against.

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Planning & Compulsory Purchase Act 2004

S.99 Compulsory acquisition of land for development

(1A) But a local authority **must not exercise the power...unless** they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—

(a-c) **the promotion or improvement of the economic...social...and environmental well-being of their area.**

If that approach is sound for compulsory purchases by a local authority, it would be logical and consistent that it applies to how council land is managed and sales of local authority land, too?

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NPPF

(June 2021 - Para. 7)

The purpose of the planning system is to contribute to the **achievement of sustainable development**

...meeting the needs of the present without compromising the ability of future generations to meet their own needs

... pursuing the 17 UN Global Goals for Sustainable Development in the period to 2030...which address **social progress, economic well-being and environmental protection**

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NPPF

(June 2021 - Para 8)

Achieving **sustainable development** means that **the planning system has THREE overarching objectives, which are interdependent and need to be pursued in mutually supportive ways** (so that opportunities can be taken to secure net gains across each of the different objectives)...

a) economic...b) social...and c) environmental

QED...

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NPPF Objectives

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

...require pro-active as well as responsive actions from the LPA that will impact on existing and future land values

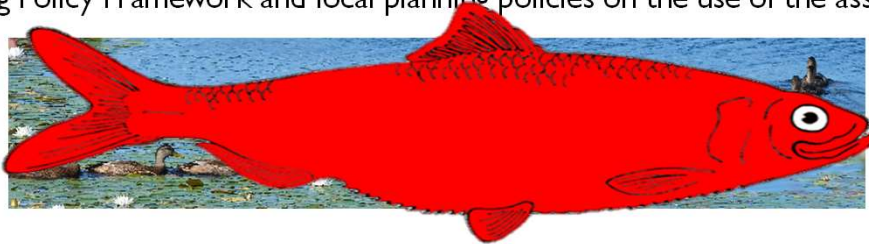
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RICS Land & Society Commission 2011

A well managed disposal of public land – ‘strategic architecture’

The planned disposal is fully consistent with the council’s overall strategies, policies and programmes, especially its Local Plan and Asset Management Plan.

‘Best consideration’ and ‘less than best consideration’ disposals, should always consider social, economic and environmental objectives alongside the organisation’s approved financial objectives, reflecting the impact of the National Planning Policy Framework and local planning policies on the use of the asset.



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“A **Red Book** Valuation is not a fact...”

p52 RICS Valuation – Global Standards - Incorporating the IVSC International Valuation Standards 2020



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International Valuation Standards I04 6-7 Defined Bases of Value

A basis of value is a statement of the fundamental measurement assumptions of a valuation.

- **Market value**
- **Market rent**
- **Investment value** (or worth) (from Jan 2022 DCF preferred method)
- **Equitable value** (pre-2016 IVS-defined Fair Value) /
...**Fair value** (post-2016 for International Financial Reporting Standards)
- **Synergistic value** and...
- **Liquidation value**

So **'Best Consideration Reasonably Obtainable'** on **what Basis of Value?**

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'Best Consideration Reasonably Obtainable' **is no longer used as a valuation concept Red Book (2022)**

Glossary references to 'consideration':

- **20.18. Price (noun)**

The **monetary or other consideration** asked, offered or paid for an asset, which may be different from the value.

- **20.29. Value (noun)**

The opinion resulting from a valuation process that is compliant with IVS. It is **an estimate of either the most probable monetary consideration for an interest in an asset** or the economic benefits of holding an interest in an asset on a stated basis of value.

i.e. 'consideration' does not equate to 'market value'
...it can apply to any of 6-7 Bases of Value

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International Valuation Standards 2016

Defined Basis of Value – **Equitable Value** (formerly Fair Value)

50.1 Equitable Value is **the estimated price** for the transfer of an asset or liability between identified knowledgeable and willing parties that **reflects the respective interests of those parties**.

50.2 Equitable Value requires the assessment of the **price that is fair** between **two specific, identified parties considering the respective advantages or disadvantages that each will gain** from the transaction. In contrast, Market Value requires any advantages that would not be available to market participants generally to be disregarded.

50.3 Equitable Value is a broader concept than market value.

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Housing & Regeneration Act 2008

S.79 A CLT must satisfy three conditions...

1. Further the **economic, social and environmental interests of a local community**
2. Own and **use land and other assets only to benefit the local community**
3. Have an open membership with **locally accountable democratic control**

Change the way the land market works...



...and be aligned with councils' powers, duties and planning policy

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RICS interpretation of 'less than best' is...

...just silly...obviously wrong...out of date

The 2004 planning reforms extended the scope of Local Government Act 2000 wellbeing powers to also be a primary purpose of spatial planning, so the achievement of social, economic and environmental objectives through planning **needs to be considered in all disposals of council assets, not just Less than Best transactions.**

The core principles of the NPPF require the balancing and integration of social, economic and environmental objectives into policy making and the determination of planning applications. The latest revision of the NPPF emphasises the interdependency of these three factors and the need for planning policy to enable these factors to be mutually reinforcing in all decisions about land use...to secure...inter alia...
"the optimal use of land and its associated resources to meet social and economic needs" (RICS Royal Charter)

Key Steps – Feasibility

The feasibility stage starts the process and is designed to make sure that:

i. the planned disposal is fully consistent with the organisation's overall strategies, policies and programmes.

In a straightforward best consideration disposal, this will be mainly or solely related to maximising receipts, taking into account, of course, the impact of planning policy on the use of the asset.

Where a disposal may be proposed at less than best consideration, identified social, economic or environmental objectives will also need to be considered.

RICS Local Authority Asset Management Best Practice 07: Disposal of land at less than best consideration (2010) **Page 7**

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RICS advice on 'less than best' ...as it should be

RICS Land & Society Commission 'strategic architecture'

Key Steps – Feasibility

The feasibility stage starts the process and is designed to make sure that:

i. the planned disposal is fully consistent with the organisation's overall strategies, policies and programmes, **especially its Asset Management Plans; all of which should aim to optimise the use of land to meet the social, economic and environmental objectives of these strategies, policies and programmes.**

In 'best consideration', (and what might previously have been considered as 'less than best consideration') disposals, i.e. all disposals, social, economic and environmental objectives must be considered alongside the authority's approved financial objectives, reflecting the impact of the National Planning Policy Framework, and Local and Neighbourhood Plan policies on the use of its assets.

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Have you been paying attention????

Who said this?

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**Councils do not own
land for its own
to make prof
are held
policy
policies
ives.**

A: The Treasury

Value for money and the valuation of public sector assets [July 2008]

**A: Treasury
B: RICS
C: Locality**

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Councils should work with partners and community groups to make the most of their assets for the benefit of their local community... using professional skills to shape places that deliver economic, social and environmental benefits.

B: RICS
Local Authority Asset Management Best Practice Guides [2007] - Introduction

A: Treasury
B: RICS
C: Locality

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The valuation of publicly owned assets is based on the interests of society as a whole, not just the council alone.

A: The Treasury
Value for money and the valuation of public sector assets [July 2008]

A: Treasury
B: RICS
C: Locality

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Have you REALLY been paying attention???
What has this REALLY been about?

Isn't it time to say goodbye to 'Less than Best'?
It doesn't mean anything, and hasn't - since 2004.

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Have you REALLY REALLY been
paying attention???

Don't you *love*
plot twists?



Isn't it also time to say goodbye to
'Best Consideration Reasonably Obtainable'?
It also hasn't mean anything since 2004

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Planning Bill 2022

Statutory duty to secure the optimal uses of public land

Place a statutory duty on all English councils, including the GLA, and Homes England to secure the optimal uses of all their land **through stewardship, development or disposal to others** to meet the objectives of:

- UN 2030 Sustainable Development Goals,
- NPPF, Local and Neighbourhood Plans, and
- any other relevant government policy that the Secretary of State may determine, particularly, at this time, Levelling Up, the Environmental Principles, Climate Emergency, Net Zero, and the wellbeing of future generations.

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Amend Local Government Act 1972

S.123 Disposal of land by principal councils.

(1)...a council may dispose of land held by them **in any manner they wish.**

(2) ~~Except with the consent of the Secretary of State, a~~ A council shall not dispose of land under this section, otherwise than by way of a short tenancy, for **a consideration less than the best that can reasonably be obtained.**

(x) For the purposes of subsection 2, the 'best consideration that can reasonably be obtained' **shall mean only a consideration** for an existing or proposed land use **that secures the optimal use of land** to meet statutory national, local and neighbourhood planning policies and any other government policy objective that the Secretary of State may determine from time to time.

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