ASSET INVESTMENT STRATEGY AND BUSINESS CASE

You hold commercial property assets with a capital value of £96.2 million. And the borough has debts of £200 million.

You're proposing to build an additional 70-80 hectares of commercial sites through the borough plus extra retail in North Street. You're investing - at the same time as *creating* lower value by increasing *over*supply.

You are not taking interest rates you will be paying into account –these are going to rise.

You are proposing to reduce the authorisation requirement for asset purchases up to £12 million to the Managing Director in consultation with the Leader of the Council and Lead Councillor for finance.

Companies with property investment portfolios have teams of people working on yield and viability.

Capital values fall as well as rise. You are making multi million pound investments in property with our money, without expertise.

CIPFA in their joint practitioners' document note you can only do *that which you are empowered to do by law and anything else is ultra vires* – ie not lawful.

Is it appropriate to utilize the **general fund capital programme** to include buying commercial property assets? - the General Fund defined by government as *the main **revenue** fund from which the **Cost of Services** is met*

Under the Prudential Code for Capital Finance, there is an ability to invest in fixed assets only that are *central to the delivery of quality local public services*.

Does buying commercial property for investment meet this criterion?

Is your strategy lawful?

In 2012 the Court of Appeal found a local council investment decision made on an ultra vires basis could not be unwound. So the contracts may stand if not.

But commentators noted that anyone who deliberately steered their authority in this direction could risk prosecution for misconduct in public office.

In your shoes I would want legal advice as to whether this investment strategy was lawful.

Are the public aware of your aggressive asset investment strategy with our money?

Investment in property already comprises 53% of the Council's investments. It is not prudent to invest further in commercial property.

Liongate House was bought for £13.7m when the approved capital provision for the year was £10.8 million.

That purchase was approved - months later - in January 2014 on the basis that in the first year rental income would be £1.3 million. But this paper notes that there is additional rental income of only £511 117. So you paid 27% more than budgeted; and the annual rental income seems to represent 39% of your expectation last January. That's not convincing.

This is high risk business. You should not invest public money without being sure that it is lawful to do so; and without ensuring that it is an appropriate and safe investment.

Notes for editors

Ultra vires decisions

http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=12459%3Aultra-vires-and-credit-suisse-revisited&catid=59%3Agovernance-a-risk-articles&Itemid=27

Charles Terence Estates Limited v. Cornwall Council [2012]

Guidance on accountability for local councils
www.nalc.gov.uk/Document/Download.aspx?uid=f1bbfc5d-60b0...

National Audit Office guidance
http://www.nao.org.uk/wp-content/uploads/2013/03/Local-Authority-Full-Report.pdf

http://www3.hants.gov.uk/glossary-financialterms-updated2010-2.pdf

Guidance on accountability for local councils
www.nalc.gov.uk/Document/Download.aspx?uid=f1bbfc5d-60b0...

National Audit Office guidance
http://www.nao.org.uk/wp-content/uploads/2013/03/Local-Authority-Full-Report.pdf

http://www3.hants.gov.uk/glossary-financialterms-updated2010-2.pdf