

Chapter 4

Prison Service

4.1 Acquisition of Site for Prison Development

The Prison Service is part of the Department of Justice, Equality and Law Reform. Establishment of a statutory board to manage the Prison Service is planned and, in anticipation of the necessary legislation, an Interim Board has been appointed to advise the Minister on the management and administration of the Service. In May 2003, the Capital Sub-Committee of the Interim Board recommended the building of a new prison on a greenfield site in the Dublin area to replace prison facilities at Mountjoy, most of which are in a very sub-standard condition.

The Prison Service asked the Office of Public Works (OPW) to help in finding a site for the prison development. The OPW commissioned property consultants CBRE to carry out a site search and CBRE reported back to the OPW in September 2003, identifying 17 properties. The OPW subsequently refined the search criteria and CBRE reported back again in January 2004. On this occasion, it identified two properties, one at Balbriggan and the second located at Dunboyne, County Meath. The OPW reported the results to the Prison Service which, in turn, kept the Department informed of developments. The OPW informed me that the Department considered the distance of the sites from Dublin to be too great.

In February 2004, the Department decided to advertise for suitable land. The Prison Service placed an advertisement in one of the national newspapers, inviting offers of sites in the greater Dublin area suitable for the development of a secure prison.

In May 2004, the Department decided to set up a Site Selection Committee, comprising officials of the Department, the Prison Service and the OPW, to assess the various site options. The Committee commenced work on 1 July 2004 and, on 16 September 2004, produced a short list of three recommended sites.

CBRE conducted negotiations with the vendors of the three sites, and reported back on the results. The Department decided to purchase a site of just under 100 acres²⁵ at Coolquay in north County Dublin, at a price of €31.35m (just over €318,000 per acre). However, on 30 November 2004, the Department was informed that the owner of the Coolquay site was not willing to proceed with the sale. On the same day, the Government authorised the purchase of a site subject to the final decision of the Minister as to location.

A farm at Thornton — in the same general area as the Coolquay land — was subsequently offered to the Prison Service. CBRE wrote to the vendors on 13 January 2005 outlining the principal terms under which the Prison Service was prepared to purchase the land. These included a price of €29.9m for the site.

The Site Selection Committee met on 18 January 2005 and agreed to recommend the purchase of the land at Thornton. A binding agreement to purchase the land was signed by the Prison Service on 26 January 2005. Payment for the land was incurred on the Prison Service Vote in 2005.

For ease of reference, key dates and events in the procurement process are set out in Table 22.

²⁵ The records of the Department/Prison Service and OPW in relation to the site procurement generally use the imperial unit 'acre' in relation to land area, rather than the metric unit 'hectare'. Acres are used in this report to avoid confusion. 1 hectare = 2.47 acres.

Table 22 Key dates and events in the purchase of lands at Thornton

Date	Event
May 2003	Capital Sub-Committee of Prison Service Interim Board recommends replacement of Mountjoy on a greenfield site in the Dublin area
Sept 2003	Prison Service asks the Office of Public Works (OPW) to search for a suitable site. The OPW asks CBRE to carry out a search for a site of between 60 and 100 acres, in the greater Dublin area
Sept 2003	CBRE reports the results of its property search to the OPW, identifying 17 potential sites
Jan 2004	CBRE makes a second report to the OPW and, as instructed, present two land options of around 80 acres
3 Feb 2004	Government agrees on announcement by Minister of intention in principle to replace Mountjoy prison complex with a new prison facility on a greenfield site in the greater Dublin area
11 Feb 2004	Prison Service advertises in Irish Independent for sites of around 100 acres, within 25 kilometres of central Dublin
23 Feb 2004	Advertised latest date for receipt of offers of sites
1 July 2004	1 st Meeting of Site Selection Committee — Committee discusses selection criteria
9 July 2004	2 nd Meeting — Committee agrees site evaluation scheme; carries out preliminary review of site offers
15 July 2004	3 rd Meeting — Committee evaluates site options and selects six sites for further investigation
31 Aug 2004	4 th Meeting — The planning and engineering consultants make presentations to the Committee on the specified sites
15 Sept 2004	Director General of the Prison Service asks Committee to change evaluation criteria
16 Sep 2004	5 th Meeting — Committee agrees to Director General's request; recommends negotiations commence in respect of three sites
22 Nov 2004	CBRE writes to Coolquay vendor with draft agreement; the proposed price is €31.35m for just under 100 acres
29 Nov 2004	6 th Meeting — Committee agrees to recommend the purchase of Coolquay land
30 Nov 2004	Government approves site purchase
20 Dec 2004	Thornton site offered to Prison Service
21 Dec 2004	The solicitor for the vendor of the Coolquay land writes to CBRE formally withdrawing the land
12 Jan 2005	Prison Service and CBRE representatives meet with Thornton parties and agree a deal
13 Jan 2005	Written offer to Thornton vendor to purchase 150 acres at a price of €29.9m
18 Jan 2005	7 th Meeting — Committee agrees the Thornton site is suitable for development of the prison
26 Jan 2005	Contract for the purchase of Thornton land signed by the State and the vendor

This examination was undertaken to assess how the identification and evaluation of the site options were managed and whether the procurement process was conducted in a manner that would ensure the State got good value for money. In carrying out the assessment, I sought to establish the market price for land comparable to the land at Thornton at around the same time.

Lisney Limited were contracted to assist in the examination.

Defining the Site Requirements

In its May 2003 report on the options for the redevelopment or replacement of Mountjoy Prison, the Capital Sub-Committee of the Prison Service Interim Board recommended the building of a replacement 600-place prison on a greenfield site elsewhere in the Dublin area. They concluded that it would be more cost effective and operationally easier and quicker to build a new prison on a greenfield site than to redevelop the existing complex while it was still in use. They also concluded that building a prison on a greenfield site should result in significantly reduced operating costs, and would allow provision of the work training facilities and recreation areas required for a modern prison, but that could not be provided on the constrained Mountjoy site.

The Sub-Committee's report did not specify the kind of land that should be acquired for the prison site, the location of the land (other than that it should be in the Dublin area), or the amount of land required. The requirements for the site in these respects consequently had to be defined as part of the procurement process.

Type and Location of Land

Under Section 181 of the Planning and Development Act, 2000, certain developments by or on behalf of State authorities are excluded from the application of the planning code in the interests of national security or the administration of justice.²⁶ As a result, in its search for a site, the Prison Service was not restricted to buying land in urban areas or land zoned for development. Agricultural land that met the Prison Service's requirement was consequently suitable for consideration.

When the OPW commenced the site search on behalf of the Prison Service in September 2003, it asked CBRE to look for sites in the area bounded by Balbriggan to the north, Navan to the northwest, Naas to the southwest and Ashford to the southeast i.e. a boundary zone 25 to 30 kilometres from the centre of Dublin. The scope of the search was to include agricultural land, land zoned for industrial purposes and institutional land. The OPW later refined its instructions to CBRE, asking them to restrict the search to the area north/northwest of the M50.

When the Prison Service advertised for land offers on 11 February 2004, it specified that it was seeking sites within 25 km of Dublin city centre. The Department has stated that this limit was based on an operational assessment that a site further than 25 kilometres was unlikely to be viable as a Dublin prison. The initial assessment of the sites by the Site Selection Committee was carried out on this basis.

In September 2004, the Director General of the Prison Service asked the Site Selection Committee to consider only sites that were within eight kilometres of the M50 motorway — i.e. about 15 to 16 kilometres from Dublin city centre. He was of the view that the M50 would form a primary artery for the transport of prisoners to and from any new prison, and that any location further than eight kilometres from the M50 would present unacceptable operational difficulties.

²⁶ Part 9 of the Planning and Development Regulations, 2001 provides for notification procedures to be followed by the State authorities concerned, to ensure that the public is consulted on proposed developments of this kind.

The initial searches carried out by the OPW/CBRE identified a number of sites that were already in State ownership. The OPW has stated that it was aware of all large State holdings of land in and around Dublin and had recently assessed these holdings for uses such as affordable housing, sites for asylum seeker centres, etc. Consequently, it was quickly able to confirm to the Site Selection Committee that there were no suitable State-owned sites available.

Amount of Land Required

The Mountjoy prison complex stands on approximately 20 acres of land in central Dublin.

The OPW's initial instructions to CBRE were to search for a site of between 60 and 100 acres. The instructions were later refined to a site area of around 80 acres, and CBRE reported on this basis in January 2004.

When the Government approved the Minister's proposal to relocate the prison to a greenfield site on 3 February 2004, it asked the Minister to consult with the Minister for Health and Children on the future of the Central Mental Hospital, Dundrum. A review of requirements for replacement of the hospital concluded that around 20 acres would be optimal to meet its requirements.

The Prison Service advertisement on 11 February 2004 specified that it was seeking a site of "circa 100 acres". The Department has stated that this was its estimate of the area of land required to

- provide single cell accommodation and facilities for the number of prisoners currently in the Mountjoy complex (over 900)
- allow for expansion of the prison in the future
- provide a buffer zone around the perimeter sufficiently deep (70-100 metres) to inhibit drugs being projected into the prison and
- provide for the possibility of the Central Mental Hospital being sited adjacent to the new prison facility.

In September 2004, in the light of apparent difficulties in identifying an ideal site, the Director General of the Prison Service indicated that a smaller site, without provision for the Central Mental Hospital or for future expansion, might be acceptable. He did not specify what reduced area might be acceptable, because the topography and the shape of the site would also have to be taken into account.

The Prison Service subsequently bought 150 acres at Thornton, 50 per cent more than the estimated area required.

The Accounting Officer of the Department has stated that the exact size of the site to be purchased depended on a number of variable factors including

- optimum size taking into account the Central Mental Hospital and possible future development
- availability
- cost
- conditions imposed by the vendor
- future use
- resale potential.

He stated that these were dynamic factors that could not all be assessed in advance or in isolation from the actual sites available, but that there was no ambiguity as to the minimum requirement.

Site Acquisition Budget

The May 2003 report of the Capital Sub-Committee of the Prison Service Interim Board includes an estimate of €10m for the cost of acquiring a greenfield site for the prison development. No details are provided in the report in relation to how this estimate was arrived at (e.g. size of site, cost per acre, location, etc).

The Department/Prison Service did not adopt a budget or affordability limit to guide its site procurement.

The Department has stated that, in the light of the number of variables involved, it was not considered to be of any significant benefit to try and set an artificially established budget for the site before the Committee had completed its work. Based on their extensive experience, the OPW and CBRE were able to advise on general market prices for different types of land which might be suitable for a prison development. The Committee also recognised that they might have to deal with an unwilling vendor because of the proposed end use for the land and that a premium might have to be paid to induce a vendor to sell. The cost of the site was seen as only one factor in the overall project of replacing Mountjoy (and the Central Mental Hospital) by new facilities on a new site. The purchase cost of the site would only have become a critical factor if it threatened the viability of the entire project.

Disclosing the State's Interest

A prospective purchaser with a special interest in a landholding is faced with the choice of disclosing his interest to potential vendors, or arranging for agents to make discreet approaches on his behalf, without identifying the purchaser's identity or the reasons for the interest in the property.

Many developers of land choose to acquire property discreetly, even when the land may be openly for sale. The primary reason for not publicly disclosing an interest is that vendors may be able to identify why their land would be of special interest for the developer, thereby identifying him as a special purchaser who would be expected to pay a significant premium over the market price, particularly where the owner of the land may need to be induced to sell.

The OPW has stated that it advised the Department and the Prison Service that, to acquire the necessary land at the lowest possible price, it would be best to proceed confidentially, using a third party agent who would not publicise the fact that the State was the ultimate purchaser. This was on the grounds that any public announcement of the State's interest in acquiring land had the potential to drive up the asking price.

The Accounting Officer of the Department acknowledges that the confidential third party strategy might have resulted in a lower price, but rejected it for a number of reasons.

- The Prison Service was not convinced that this strategy would produce a broad enough range of sites that might be suitable. The Department considers that this view was confirmed by the fact that the advertisement resulted in a number of sites being offered that would not otherwise have been identified.
- The Prison Service was concerned that the third party approach did not comply with best practice for acquiring a site for a major prison development as it was not open and transparent, that it could give rise to allegations that political influence or corruption dictated the choice of site and that therefore it would be difficult to justify such a strategy to the Government or the Public Accounts Committee.
- Because of the size of the purchase and the need for in depth assessments and surveys prior to purchase, the Prison Service had real doubts as to whether it would be possible in practice to close a contract without the vendor becoming aware of the identity of the purchaser.

The Accounting Officer of the Department has stated that the cost of any premium paid above farmland prices should be weighed against the monetary and non-monetary benefits of inviting expressions of interest by public advertisement. He has also stated that the Department did not seek professional advice on the potential impact that advertising its interest in acquiring land would have on the price it would be likely to have to pay. He pointed out that the advertisement seeking offers of sites was intended also to provide some indication of the prices being sought for the type of land that might be suitable for a major prison development. However, these asking prices would be expected to already include a special purchaser premium, and so would be difficult to interpret without corresponding market value amounts.

The Accounting Officer of OPW has stated that he accepts that the approach taken by the Prison Service was reasonable. He has also pointed out that a Part 9 planning application following a confidential purchase would have the effect of conferring on the State, and on no one else, the ability to develop the land. He raised the question of whether the State should use this procedure to confer on itself planning gain and increased value after having paid a much lower price for land on the basis that it had no developmental potential.

Hiring of Advisors

Central government departments and offices must comply with EU Procurement Directives in acquiring professional services, including those of consultants. The Directives require that, where proposed public sector contracts for services are expected to exceed certain threshold values, they must be advertised in the Official Journal of the EU. In 2004 and 2005, the relevant threshold for services procurement was €154,014 (excluding VAT).

In addition to the EU Directives, the Department of Finance publishes guidelines setting out best practice principles and guidance for engaging and managing consultants. These include requirements to seek competitive tenders from a number of service providers, to agree fixed fees for specified services, and to formally review the work done by consultants prior to final payment.

Based on the EU and Finance rules and guidelines, OPW has established a Consultants Selection Committee that considers requests for the appointment of consultants for construction projects. This Committee is also responsible for reviewing the terms of engagement of consultants and their fee levels.

OPW asked CBRE to become involved in the site search around the middle of 2003. There was no tendering for the service and no formal contract. Despite carrying out searches and producing two reports, it was only in May 2004 that CBRE formally wrote to OPW, setting out its fees for proposed professional services required to complete the site acquisition. This was prior to the decision of the Department to set up the Site Selection Committee.

CBRE's cost proposals included fees in respect of site selection study, site inspection and site acquisition negotiations; engineering studies of services, roads and site conditions; and studies of planning issues. CBRE indicated that they planned to sub-contract the engineering and planning studies to named firms of consulting engineers and consulting planners.

When CBRE made its fee proposal to OPW, it was envisaged that only three sites would be assessed as proposed. Consequently, the total fee proposal for the consultancy services was €184,500 (plus VAT and expenses).

By the time the process was completed, ten sites had been assessed by the consultant engineers and planners. As a result, the amount paid to CBRE in connection with the prison site acquisition was €256,506 (plus VAT of €53,866).

Prison Service

The manner in which OPW contracted with CBRE for the provision of professional services for the site selection and procurement did not comply with the rules for procurement of professional services in a number of respects.

- The requirement for professional services was not advertised in the Official Journal, even though the total amount paid exceeded the advertising threshold.
- There was no competitive tendering for the professional services' contract.
- OPW's Consultants Selection Committee was not asked to assist in selecting and engaging the service providers.
- OPW did not have a specific written contract with CBRE, which militates against the assessment of service delivery and the determination of the amount payable for those services.

In response to my enquiries relating to advertising and competitive tendering, the Accounting Officer informed me that judgments have to be made on a case-by-case basis on the known facts at the time. The Accounting Officer did not believe that it was necessary that the requirement for professional services should have been advertised in the Official Journal. He said the initial input by CBRE had been on the basis of their carrying out a confidential search for sites. CBRE had already done work for the Prison Service, had been aware of the issues involved and had recent relevant experience.

He also said that, in the case of the prison site, OPW's initial approach had been to acquire the site discreetly. The estimated cost of this service was below the EU advertising threshold. Furthermore, as it was at the time intended to keep confidential the ultimate use of any property acquired, it would not have made sense to have a public procurement for the appointment of professional advisors. When it was decided to adopt a more transparent process, OPW felt that tendering for a new agent at that point would have led to delays and given rise to an unnecessary duplication of effort and cost.

He said that a different approach is taken for property consultants and estate agents than for external consultants required for OPW building and engineering activities. While a list of suitable firms is drawn up on the basis of public advertisements for property consultancy services, OPW reserves the right in the public interest to make appointments from outside the list in specific instances or in circumstances when a special expertise is required or for reasons of confidentiality where the interest of the State should be kept confidential for a period.

He said that the initial approach of the OPW to this case — that the State's interest and purpose of the acquisition be kept secret — was, along with CBRE's relevant recent experience, one of the reasons why a confidential appointment had been made.

In the matter of a contract with CBRE, the Accounting Officer said that the contract was founded upon an exchange of emails between the two parties.

Finally, the Accounting Officer believed that the ongoing oversight and review of the firm's performance by both OPW and the Committee constituted normal and adequate oversight and monitoring.

Evaluation of Site Options

The Prison Service's advertisement asked for offers of sites to be submitted by 23 February 2004. However, this wasn't treated as a fixed closing date (as would be the normal case in a competitive tendering process) and offers received after the specified date were not excluded from consideration. Land purchases are not covered by EU procurement rules, so it was appropriate for the Prison Service to consider offers as they arose, in the interests of maximising competition among potential vendors.

Initial Evaluation

By the end of April 2004, the Prison Service had received a total of 28 offers in response to the advertisement. A further three potentially interesting sites were identified by OPW/CBRE through their search work. The OPW and CBRE assessed all the sites, and produced a short list of three, drawn from those sites which conformed in size and location to what was required. The basis on which the short list was arrived at is not clear. OPW reported to the Department on the short-listing on 20 May 2004.

Given the very significant financial and operational implications for the Prison Service of the site selection, the Department was strongly of the view that the site options needed to be rigorously evaluated in an objective way by people with expertise and experience in all the relevant areas. Because OPW and CBRE did not have the full range of necessary experience and expertise, the Department decided on 27 May 2004 to establish a Site Selection Committee to carry out the evaluation and to record the basis on which the site selection recommendations were made.

Evaluation Criteria

The Site Selection Committee held its first meeting on 1 July 2004, and discussed a site evaluation scheme. Eight evaluation criteria were proposed including cost per acre, general location and accessibility of the site, and shape and size of site. With some minor amendments, the scheme was agreed at the Committee's second meeting on 9 July 2004.

After receiving a letter from the Director General of the Prison Service, the Site Selection Committee revisited the evaluation criteria on 16 September 2004. They decided to drop cost per acre from the evaluation scheme and reallocated the associated marks to the criteria relating to general location and shape/size. Evaluation of sites on and after that date was based on the revised scheme. Sites eliminated from consideration earlier on cost grounds were then reviewed, and some were evaluated against the revised evaluation scheme. Sites eliminated earlier on other grounds were not re-evaluated. Table 23 sets out the evaluation criteria, and indicates the weights assigned to each.

Table 23 Evaluation criteria and weightings used in site selection process

Evaluation criterion	Original scheme (9 Jul to 31 Aug 2004)		Revised scheme (16 Sep 2004 to 18 Jan 2005)	
	Maximum mark	Percentage weight	Maximum mark	Percentage weight
Cost per acre	80	16%	—	—
General location /accessibility vis a vis Courts, other prisons, etc.	60	12%	100	20%
Proximity to public transport links	80	16%	80	16%
Availability of emergency services (Fire/Garda/ hospitals)	15	3%	15	3%
Access/egress options	65	13%	65	13%
Shape, size, topography of site	100	20%	140	28%
Availability of services, power, sewerage, etc.	40	8%	40	8%
Planning/community impact	60	12%	60	12%
Total	500	100%	500	100%

Consistency of Evaluation

The Site Selection Committee agreed that sites would have to score a minimum of 40% of the total available marks on all criteria to avoid elimination from consideration.

The Committee eliminated most of the site options on a consensus basis, without assigning evaluation scores, judging them to have failed on at least one of the evaluation criteria. It assigned scores for a total of 13 sites against the evaluation criteria at its meetings on 15 July 2004 (8 sites), 16 September 2004 (4 sites and revision of one site scored earlier) and 18 January 2005 (1 site — Thornton).

The Committee did not record the basis on which scores were awarded to individual sites under the various criteria, even though the criteria were generally amenable to technical analysis and quantification e.g. distance from the centre of Dublin, proximity of public transport services, call out time for availability of emergency services, aggregate estimated cost for provision of services and road improvements, etc. How the information provided by the engineering and planning consultants impacted on the decision making about site selection is also not clear.

Because the basis of the scoring is not recorded, it is difficult to establish whether or not the evaluation of the sites was consistent. For the purposes of this examination, the evaluation scores awarded by the Committee to four of the sites were compared to assess their consistency. To allow comparison between sites marked under the original and revised schemes, the marks awarded by the Committee under each criterion were expressed as percentages of the relevant maximum marks.

The four sites were selected because they were all located relatively near one another, and on or near the N2 national primary road. The sites were

- the Open Golf Centre, located between the M50 motorway and Dublin airport — this site received the highest score of all the sites evaluated by the Committee, but the site offer was withdrawn by the vendor in August 2004
- a site at Bullstown, just inside the County Meath border, and which was eliminated from further consideration by the Committee on 31 August 2004
- the site at Coolquay, which the State offered to buy in November 2004
- the Thornton site which the State ultimately bought.

It should be noted that the sites were not re-evaluated as part of this exercise. The objective was to establish whether or not the relative evaluation marks were consistent, not to identify what the 'correct' marks would have been.

There are a number of respects in which the marks awarded by the Site Selection Committee appear to be inconsistent. For example

- The respective distances by road from the sites to the junction of the M50/N2 (and to the centre of Dublin) do not appear to be reflected proportionately in the marks awarded under the general location/accessibility criterion.
- Sites served by the same public bus service got different marks in relation to proximity to public transport; and a site not served by any direct bus service got the same mark as a site that was served by a public bus service.
- One site got a significantly lower mark than two others in respect of availability of site services, even though the consultants estimated that the cost of provision of water, sewerage and energy services would be higher at the other sites.

The Accounting Officer of the Department has stated that he does not accept that the use of percentages makes for a valid comparison when different weightings were used and a completely new assessment has been carried out. He stated that the priority was to ensure that each assessment process was internally consistent to ensure a valid comparison could be made between the sites in contention.

Evaluation of Cost

The original evaluation scheme drawn up by the Committee included cost per acre as a criterion, but with a low weighting (16% of the total available score). This created the risk that even very significant differences in cost per acre between site offers might be outweighed by relatively small differences in site characteristics.

The removal of the cost per acre criterion from the scoring system in September 2004 potentially allowed sites to be compared on their respective merits and a relative rank order of the sites on offer to be established. However, some test of the relationship between costs and benefits was then needed to bring cost back into consideration in the site selection process if good value was to be achieved.

The Committee recommended that price negotiations should commence with the vendors of three sites ranked highest in the evaluation carried out on 16 September 2004. Cost wasn't considered at that stage — the Department/Prison Service decided to postpone consideration of cost until actual land prices emerged in negotiations with vendors. However, this resulted in negotiations being opened only on sites where high prices had been sought initially by the vendors.

Better value for money might have been achieved if the Department/Prison Service had looked at all the sites that exceeded the specified minimum score levels during the full evaluation process, and weighed up whether or not the perceived extra benefits of more expensive sites were worth the additional costs. Options for improving the suitability of the less expensive sites should also have been considered e.g. securing small adjoining properties to regularise overall site configuration.

The OPW has stated that the Site Selection Committee felt strongly that the capital cost of the site was but one element in the overall value equation to be considered for the new prison. It said the Committee considered it vital to obtain the best-configured site so as not to compromise the form of what would be a major State institution with an operating life of probably 150 years. It was the Committee's strongly held view that any layout flaw in the new prison caused by a less than ideal site would cost multiples of the initial site price in lost operating efficiencies over the long life of the prison.

Valuation of Sites

Having publicly advertised its interest, the State had declared its position as a purchaser with a 'special interest'. Negotiating a successful procurement in these circumstances demanded, at a minimum, that the State agencies maintain competition and equip themselves with key information in the form of a valuation report.

The Department and the OPW have stated that, while they did not seek valuation reports on the properties under negotiation, they comprehensively discussed with CBRE the likely market valuation range for the sites of interest. They recognised that the prices proposed by the vendors would be likely to exceed the respective market valuations by the 'special purchaser' premium that attached to the sale. The advice of CBRE on the likely valuation range for sites of interest to the Prison Service was not recorded at the time.

Analysis of Land Values

The market value of land is the price it is likely to achieve in an open sale, where the vendor initiates the sale. In such circumstances, the price achieved will usually reflect the productive capacity of the land (and

of any associated buildings) and any generally perceived 'hope value' deriving from the development potential of the land e.g. related to proximity to towns or developing areas, infrastructure, zoning plans, etc.

At the time of its purchase, the main characteristics of the Thornton land relevant to its market value were

- it was a large landholding (150 acres)
- the land was zoned agricultural, but included a small element of 'RC' zoned land²⁷
- it was situated in a mainly rural setting (the nearest urban centre — Swords — is about 5 kilometres away, via local roads)
- there was no access to mains drainage nearby
- the land was located 1.6 kilometres from the N2 and had direct access to regional and local roads only
- the site was not served by public transport.

A survey of auction results in 2004/2005 for large holdings of agricultural land in the north Dublin and east Meath areas indicates that the prices achieved were in the region of €20,000 to €30,000 per acre. Table 24 sets out a sample of these auction results.

Table 24 Prices paid for agricultural land in north Dublin and east Meath, November 2004-October 2005

Address	Size (acres)	Price per acre	Total price
Ballyboughill, County Dublin	86	€29,766	€2,560,000
Garristown, County Dublin	102	€30,293	€3,090,000
The Naul, County Dublin	109	€19,265	€2,100,000
Ratoath, County Meath	238	€26,050	€6,200,000

The degree of developmental potential that might attach to any particular parcel of land, like Thornton, is difficult to assess. Within the north County Dublin area, higher prices have been paid for large parcels of agricultural land, reflecting different degrees of development potential. For example, €68,000 per acre was paid for 73 acres of agricultural land at Turvey, County Dublin, adjacent to the M1 — this land was later zoned industrial.

In areas undergoing large scale urban development, unzoned land can attract much higher prices. For instance

- €191,000 per acre was paid for 115 acres of unzoned land at Adamstown, County Dublin, which is an area intended for significant new town expansion under agreed action area plans
- €400,000 per acre was paid for 96 acres of unzoned land at Tyrrellstown, County Dublin, which is an area undergoing significant residential development.

The Accounting Officer of the OPW has stated that knowledge of the demographic pressure on the greater Dublin area and a study of the map of north County Dublin and the relative positions of settlements and road networks would confirm that development is likely to reach the Thornton area in the future. His view is that, in assessing its value, a vendor would assign a 'hope value' to such a holding on the basis that it was only a matter of time before development would be permitted, particularly at a stage when development plans in the greater Dublin area were being revised. He stated that the Site Selection

²⁷ Land zoned RC in the Fingal Development Plan 2005-2011 is so designated to protect residential amenity and the character of settlement clusters and to provide for small scale infill development to serve local needs

Committee took the long view of the value issue into consideration in the context of the probable 150-year life of the proposed new prison and its place in an expanding city.

Subsequent to the agreement to purchase the land at Thornton, CBRE wrote to the Prison Service on 3 February 2005 stating that “*As (we) mentioned to you from the outset, the land being purchased in the Fingal county area by developers speculating on land with the hope of getting those lands rezoned in future development plans, trade at anything from €75,000 to €100,000 per acre.*”

CBRE attributed the balance of the cost to the fact that, because the public advertisement of the Prison Service requirements meant that potential vendors knew the identity of the purchaser, there was always going to be a premium price placed on properties being offered for sale by the vendors. This premium, in their opinion was “... *purely down to the ‘fall-out’ factor being identified by vendors for the stigma attached of being the vendor of the property for the prison in their locality.*”

Ultimately, the price paid by the Prison Service for the Thornton land — around €200,000 per acre — was at least twice the market price at the time for well-positioned agricultural land with development potential in the target area in north County Dublin. While it is acknowledged that the hope value attached to any particular holding may vary according to the subjective assessments of the parties on the prospect and nature of future development, it is likely that the main factor giving rise to the differential between the price paid for the Thornton land and the going rate for similar land in the area was public knowledge of the State as the purchaser and the premium associated with that status.

Negotiation of Purchase

Negotiations with the prospective vendors were conducted on behalf of the State by CBRE, with some involvement of officials of the Prison Service.

There is no official record indicating that the Department/Prison Service and/or the OPW clearly specified to CBRE what the negotiation strategy should be, what the spending limit was or what conditions were to be applied to protect the State’s interest. The only evidence of a negotiating mandate is contained in two letters from CBRE to the OPW and the Prison Service on 11 and 22 November 2004, putting on the record the main elements of the proposed State offer to buy the land at Coolquay.

No similar record exists in relation to the State’s offer to buy the land at Thornton. However, the cost limit set for the Coolquay offer (i.e. up to €31.5m, as noted by CBRE in their letter of 22 November 2004) may have been treated by the Prison Service as setting the limit of what could be spent in relation to Thornton.

It is noted that the initial approach from the Thornton vendor’s agent proposed a price of €210,000 per acre, implying a total asking price of €31.5m for the 150 acres on offer.

Level of Competition

In late September 2004, negotiations commenced with the vendors of three shortlisted sites. These were located at

- Coolquay, County Dublin
- Sillogue, County Dublin, and
- Clonee, County Meath.

However, when the Committee met on 29 November 2004, it was told that the cost of one site had escalated to circa €500,000 per acre, and that the owner of another site was “not open to realistic discussions in relation to cost”. Therefore, it had become apparent to CBRE, the Department/Prison

Service and OPW that only the remaining option (Coolquay) was a realistic prospect. By the time the Thornton land came into play, that was also the only realistic prospect.

In effect, the State twice ended up negotiating a sale with single vendors, with no effective degree of competition. While the vendors may or may not have been aware of this, the lack of competition weakened the State's negotiating position. The lack of apparent alternative deals on offer may have created a fear on the part of the State agencies that other, better offers were unlikely to emerge.

Disclosure of Connection

On 10 January 2005, the OPW was informed in a telephone conversation with the CBRE representative that he had discovered that he had a distant connection through marriage to the vendor of the Thornton site. Prison Service officials state they were also informed on that date.

The OPW record includes a copy of a CBRE file note written by CBRE's representative dated 12 January 2005. The note states that

- The CBRE representative had only become aware of the connection to the vendor on 10 January 2005.
- On 12 January 2005, OPW gave him approval to negotiate to purchase the property subject to title, contract, Ministerial approval and Cabinet approval on the basis that the approval should be forthcoming given the comparisons with the Coolquay property.
- The CBRE representative, along with two officials from the Prison Service met the Thornton vendor on 12 January 2005 to discuss the possible sale of the land to the State.

The OPW stated that, following the disclosure of the connection, it invoked its internal procedures in relation to declarations of interest or connection in this case. The CBRE representative offered to withdraw from negotiations but the OPW declined the offer, judging that the connection was at a sufficient remove and the process would be damaged more by the withdrawal of the CBRE representative.

Pre-acquisition Procedures

At the time of its offers to buy land at Coolquay and Thornton, the State had not completed certain procedures.

- Comprehensive site surveys, which would have taken some months to complete, had not been carried out on either property prior to the purchase offers. In these circumstances, offers to buy are normally made conditional on comprehensive site surveys being carried out.
- There was no comprehensive costing in either case of the work that would be necessary after acquisition to enable the site to be used for a secure prison. For example the cost of road widening to serve the Thornton land was not assessed and, in the case of the Coolquay land, the cost of dealing with a recognised site flooding problem was not assessed.

The OPW Accounting Officer has stated that the professional advisors supplied surveys which included all the relevant information and costings required to make a decision on acquisition, and that the successful completion of the Thornton sale demonstrated that no deal breaking issue emerged. He also stated that risks associated with sites and post-acquisition costs were discussed by the Committee prior to offers to vendors being made.

The Accounting Officer of the Department informed me that, although not ruling out the option that the road might be widened in the future, the existing width of the R130 road from the N2 to the Thornton site was assessed as being perfectly adequate.

Completion of Purchase

Following the recommendation of the Thornton site by the Site Selection Committee on 18 January 2005, the Prison Service and the Chief State Solicitor's Office examined title, clarified with the vendor the exact boundaries of the site and prepared a contract for signature. A memorandum for information was prepared for the Government meeting on 26 January 2005, at which the proposed purchase was noted. Department of Finance sanction for the purchase was issued on the same day and the contract for the purchase was signed that afternoon. Ten per cent of the purchase price of €29.9m was payable on signing the contract, with the balance due on closing on 1 October 2005.

Conclusions

The evaluation criteria adopted by the Site Selection Committee, set up to carry out an objective assessment of the sites on offer and to record the basis on which site selection recommendations were made, were relevant to the site selection. However, the available records do not provide sufficient information about the basis for the Committee's assessments, and there are some apparent inconsistencies in its evaluations.

The overarching factor in the high cost of the purchase was the decision to disclose the State's interest in acquiring a site for a prison. This identified the State as a special purchaser with the attendant financial implications for the Exchequer. The fact that the target location was land to the north/north-west of Dublin City, within a reasonable distance of the M50, meant that the asking price for the land would also include an element of hope value, regardless of its current zoning for planning purposes.

OPW initially favoured a confidential approach. The Department, while recognising that a third party strategy might have resulted in a lower site cost, considered that, in principle, the purchase should be open and transparent and that, by publicly disclosing its interest, it would attract a wide range of potentially suitable sites, especially lands not even contemplated for sale by their owners hitherto. The Department also considered that, on a pragmatic level, it might be difficult to close a sale without the vendor becoming aware of the identity of the prospective purchaser in light of the in-depth assessments and surveys that would be needed prior to purchase.

OPW accepted the reasonableness of the Department's decision to disclose its interest and the proposed end-use. It was conscious of the possible implications of the State using a special procedure in the planning law to confer a monetary gain on itself.

Considerable effort was expended in trying to identify and evaluate sites for the new prison. However, identification rounds by the OPW and the invitation of expressions of interest by way of public advertisement did not directly contribute to making available a property that was suitable in all respects for the stated purpose at an acceptable price. One consequence of the process undertaken was the determination of a price, €31.5m, that the Department was willing to pay for the Coolquay site – a purchase which fell through. Subsequently, as a result of a third party contact, the site at Thornton became available for sale at the same price. Ultimately, the Department purchased this site for €29.9m.

The procurement arrangements and, in particular, the use of a public advertisement did not position the State to acquire the land at the lowest cost economically achievable. However, once that approach had been adopted, it was important to have an element of competition in order to try to mitigate upward cost drift. In the event, no real competition on price materialised. Twice during the acquisition process, the State was left negotiating a price with only one potential vendor. This weak negotiating position was not conducive to achieving value for money.

The Prison Service had the freedom under planning law to use agricultural land for development of the prison facilities. The price paid for the site at Thornton is likely to have been at least twice the market price at the time for well-positioned agricultural land with development potential in the target area in

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north county Dublin. In the circumstances, a well-managed, confidential, third party approach might have allowed the Prison Service to procure suitable land at a much lower price than was paid for the land at Thornton.

The area of land acquired was also greater than that sought by the Prison Service to meet its needs and those of a relocated Central Mental Hospital. While the larger site affords the opportunity for future expansion without further land acquisition, the fact that the land was purchased at a price substantially more than the market price of similar lands calls into question the value obtained from the enlarged acreage.

The purchase of this site raises the question as to whether there is a need for greater consistency in the land acquisition procedures employed by the State for public good projects. In this respect, it is worth noting that under Compulsory Purchase Order mechanisms, prices paid for land required for public infrastructure development are based on market value, while under the mechanism employed in acquiring land for an essential structure like a prison, a considerable premium was paid by the State.

General Views of the Department

The Accounting Officer of the Department, while accepting that in many cases a third party approach may result in the best value for money, has pointed out that the moral and strategic imperatives in the purchase of a site for the most significant prison development in the history of the State imposed special and unique demands. A deliberate and principled decision was taken not to use a third party approach for the purchase of the site both for the practical reasons already outlined but also for ethical reasons particularly where local opposition might be aggravated and the vendor forced to leave the area. He is satisfied that in the particular circumstances, it would not have been possible to obtain a site as suitable as Thornton for any less than was paid. This view is reinforced by the fact that to the best of the Accounting Officer's knowledge no comparable sites closer to Dublin have been sold in the recent past for an amount per acre less than was paid for Thornton.