

REVIEW ARTICLES AND REPORTS**Sonia GUELTON*****SALES OF DISUSED PUBLIC REAL ESTATE:
public policy or private business?
Three examples of French practices****1. INTRODUCTION**

Since the end of the 1980s, the amount of disused public property has increased considerably in both Western and Eastern Europe. This land represents a major stake in local development, considering its location at the core of urban areas and the nuisance occasioned by neglect. Meanwhile, public agencies have little practise, as yet, in property conversion on such a large scale. The context of streamlining in public management impels Agencies to sell the surplus land. This article focuses on the process of selling public property as an illustration of partnership between private and public circles. The aim of the report is to show how private-type bargaining, current in free-enterprise, is used by French Public Agencies to achieve public policy. On the other hand, the matters of legal constraints or opportunities for re-use will not be gone into, despite their being a factor in choices of procedure.

The topic may best be illustrated by three instances which have occurred at various levels of the French civil service, bearing in mind that such occurrence is still exceptional in France and may be regarded as pioneering.

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Let us first take the case of the Ministry of Defence, which has adopted a specific procedure in order to dispose of land and facilities which are no longer needed, in view of recent developments in defence policies (e.g. fall of the Berlin wall). 20% of the sales concern buildings specifically used for housing and 25% – multipurpose barracks. Most countries will have to cope with similar situations.

The second case, this time in the realm of local government, involves the township of Lyon, where authorities launched a program at the beginning of 1998 to promote the sale of 40% of town property. This is quite an unusual situation and the partnership with the private sector is worthy of note.

The third case deals with the Paris public transport service, the RATP, (Autonomous Company for Parisian Transport – indicating its semi-independent status). The RATP, which enjoys the status of a public agency, has been in charge of urban transport in the Paris urban area since 1948. The legal settlement is leading to concerted action with other urban partners. Since 1990, in particular, the company has dealt with land conversion and development and has operated on the market with relative flexibility.

First a brief appraisal of the assets involved will be made (part 2), and next the objectives sought for in the selling process will be examined (part 3). Then the extent to which the characteristics of the free market influence public decisions will be considered (part 4). The conclusion attempts to draw the line between the public and the private aspect of these ventures.

2. A WIDE VARIETY OF LAND AND BUILDINGS BEING SOLD IN STRATEGIC PARTS OF URBAN AREAS

The public property up for sale is rather miscellaneous, from vacant lots to historic buildings or industrial facilities. Our examples illustrate the various types of assets and their purpose in the city.

The Ministry of Defence has sold a lot of land and buildings, two thirds of which are located in urban areas. They are shown on figure 1. Six hundred transfers have been handled in those cities, involving more than two thousand hectares. About 50% of the sites are large expanses of unimproved vacant land, and some of this sports the remains of military structures in varying states of decay, mostly in the suburbs. Portions of these areas are so polluted as to be unusable except as unbuilt open space devoted to leisure or cultural activities. More than a third of the sites are isolated buildings or barracks, used either for office space or as housing. Only a few are regular large military bases. Most of them are located in town centres and may be regarded as buildings of value in

urban development. Other sites are technical facilities in good repair – such as warehouses, air force bases and hangars, or hospitals. They are often located close to developing industrial zones and near to transport connections.

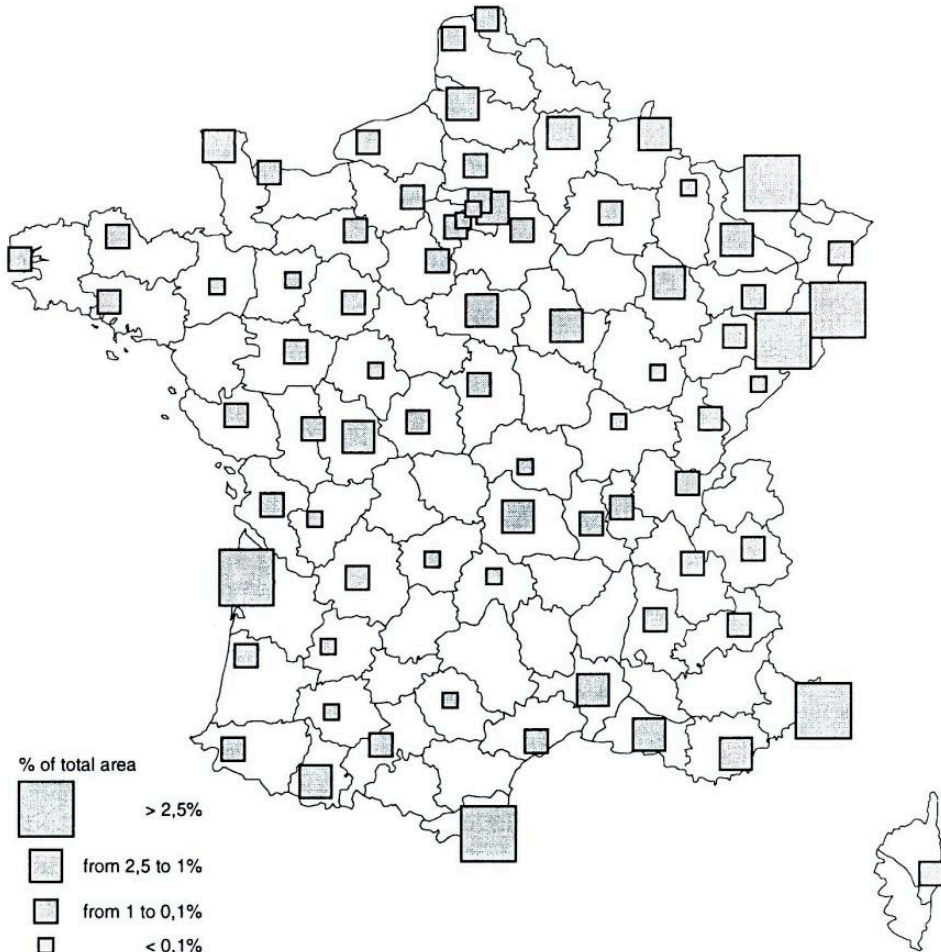


Fig. 1. Military bases sold from 1986 to 1997

The properties of Lyon city district are more homogeneous. Neither office buildings nor structures devoted to welfare, such as kindergartens, are involved. The sales program includes two thousand and forty buildings on close to five hectares of land. Most of them are blocks of flats or smaller buildings leased to families for housing purposes. A few have served as craftsmen's workshops or small tradesmen's shop space. Except for three sites, they are all located downtown, that is to say in the inner centre of the city. One reason for the town

council's decision to sell them is that they are at present in a state of disrepair. But they remain attractive locations for private purposes.

The RATP's holdings mainly comprise technological facilities, but some redundant patches of land have regularly been sold over the years for the sake of land reapportionment. The case at hand entails half a dozen recent sales of obsolete industrial sites following the moving of bus depots and maintenance facilities to the suburbs. The sites comprise eleven hectares in the heavily built-up and intensely developing heart of Paris' downtown area. The facilities cannot be maintained. The sites are subject to conversion projects, which involve 60% of welfare housing, following an agreement between City and State applicable as of 1994.¹ The multifarious character of public property gives an idea of its potential value in urban development. This also implies a diversity of conversion procedures and constraints, which are not dealt with in this article. It is important to note, however, a convergence of goals aimed at by those departments which decide to sell.

3. WHY DO GOVERNMENT AGENCIES SELL PROPERTY?

When we examine the broad spectrum of reasons given by agencies or pinpointed by their urban partners in the sales process, we must observe that private aims do not coincide with public aims. On the one hand, we have a target of 'streamlining' in private management,² and on the other hand, public goals relating to the public duty³ to regulate development and to stimulate private enterprise.

Private aims may be characterised by the will to achieve efficient estate management and to make profits. Estate management is a rather new concept in public administration. It first became relevant with the adoption of a reserved land policy. The idea was for the government to buy real estate so as to stabilise the price of land.

First of all, the present trend is to cut down on land withholding, which has proved to be very expensive, as it entails insurance, maintenance, and other

¹ A government regulation called *Circulaire Rocard*, recommended in 1990 to release real estate and to implement social conversion programs up to 60% of the new buildings. In 1994, RATP signed an agreement with the State and the City of Paris with the same purpose on two specific sites.

² Justifications of this target in global economies, characterised by the interference of private and public market, are given in Bouinot and Bermils (1993).

³ At different level of administration, according to Bennett (1990) *Decentralisation and economic development*.

incidental costs of upkeep. The cost has become increasingly difficult to bear, due to the specialisation of functions and subcontracting in the process of decentralisation, and as far as the Army is concerned, with the end of the conscription.

In the second place, land withholdings, resulting from years of estate dealing, have proliferated and do not always fit the needs of the present public policy.

The extent of disused property, which has come to light due to the new requirement of inventories in civil service departments, and the political stimulus to implement efficient public management – these various factors are the reasons for the present trend of classifying real estate and discarding what has fallen into disuse.

Another reason for selling disused real estate is the profit to be made. At all levels of government, the budget target is a major consideration, and the sale of assets is a means to cover new investment costs. Moreover, the Ministry of Defence is exempted from the French administrative regulation stipulating that all funds incoming to any particular civil service department must go 'unearmarked' into the central Public Treasury. Hence the proceeds of sales enacted by the Ministry of Defence go directly into the military budget. Financing new acquisitions with the proceeds from the sale of obsolete assets is admittedly an example of efficient budgeting, especially as Public Services demand fair market prices. Considering the length of time that assets due to be sold have already spent under public ownership and the time involved in deciding and proceeding to sales, speculative processes can not be taken into account. On the other hand, the fair market prices bid for allow profits to arise from bargaining on the real estate market. In the early 1980s, the Ministry of Defence did indeed benefit from this situation and registered significant profits. The downward trend of land prices in the 1990s gives little hope that such good fortune may continue. The point is that the present day government objective is to be analysed in terms of promoting cash-flow, which is different from making profits.

In any case, the public interest has not been neglected. It may even be said to prevail in the recent operations carried out by the Ministry of Defence. Furthermore, institutions at every level clearly appear to favour conversion of the sites and to encourage the development of local economies. However diversified their methods, and while their goals may not be formally articulated, those objectives have been taken into account.

Town councils have been commissioned for local development.⁴ Lyon's program of sales may be regarded as a method of making the best of financial

⁴ By decentralisation laws.

constraints in order to arbitrate between public and private intervention on local development.

Although the Ministry of Defence has no mandate to promote development, it has sponsored conversion studies and organised concerted prospective conferences. Their main concern is to regenerate activity on the property involved.

The RATP has chosen the methods of direct intervention, managing the sites and implementing development programs with their urban partners. Indeed, the RATP is automatically involved in public planning, since state and city authorities are their legal partners, as shown on figure 2. In the first place they share seats on the RATP board of management. Besides, some of the company's sites are owned by local government⁵ which has an indirect effect on estate management policy.

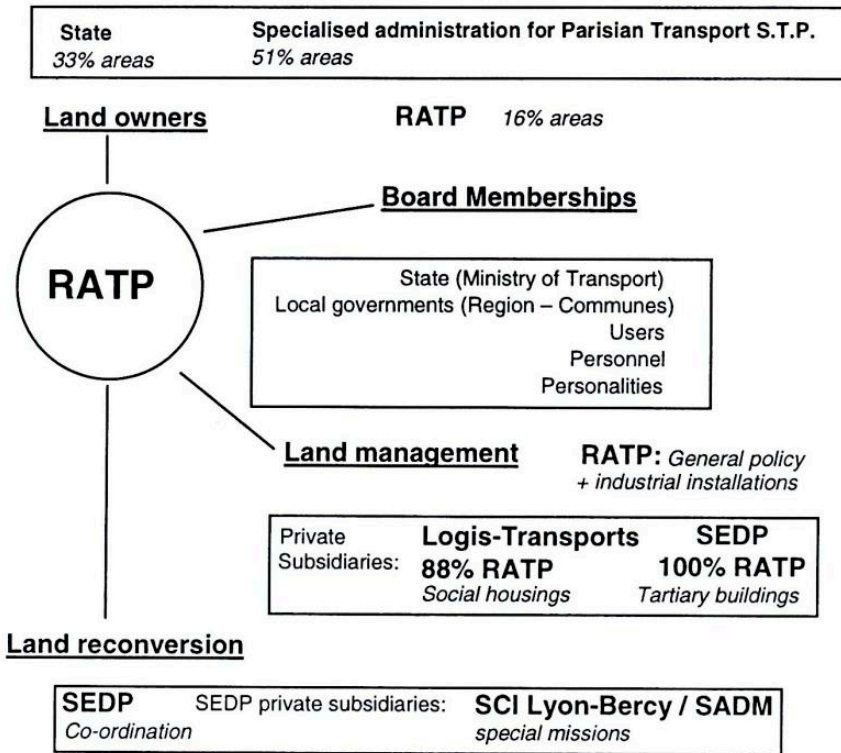


Fig. 2. RATP partnerships

⁵ Local governments are members of the STP.

The RATP has commissioned private investors to organise sub-contractor branch agencies with which it maintains close partnership, and they are in charge of developing strategic disused sites. These branch agencies also carry out urban missions such as welfare housing and local regeneration. Logis-Transport is a builder and administrator of welfare housing. SEDP is in charge of developing real estate and buildings for office space and for private housing. In the light of such partnership, the RATP may be credited for civic-mindedness both in the civil service and on the private market as well, and seems to fulfil both its private endeavours and its duty to the public interest.

A final concern is the reputation of the Government departments. This suffers from the impact of negative policy. The reduction of military activities has created a gap in many local economies. City districts have suffered from financial scandals and rumours of corruption, especially in the assignment of welfare housing. Urban public transport is an environmental spearhead in the fight against pollution and urban congestion. A great deal is at stake in their keeping their name clean and having the freedom of manoeuvre to play a significant role in local economic development.

4. HOW IS PUBLICLY OWNED REAL ESTATE BEING SOLD?

The situation heretofore described has led Government departments to the decision to sell surplus real estate. The following procedure pattern shows how on the one hand the Ministry of Defence opted for recourse to the free market, and how on the other hand Lyon town council and the RATP have chosen partnership with private contracts guided by public committees.

It must be recalled that the legal proceeding for selling public property in France is by 'Auction'. Auction is mandatory if State property which has been valued at more than 1 million Francs is to be sold, except when the buyer is *per se* a government agency. The rule is not mandatory at other levels of government. It is generally understood that this rule is meant as a protective measure against private lobbying and speculation. Nevertheless, in the instances we quote, more than fifty per cent of the sales have been subject to bargaining based on a determination of fair market prices. In fact, new processes have been implemented in order to insure fair dealing and unimpeachable contracts. Let us focus on the decision to sell (a), the trading delegation (b), and on special restrictions concerning the purchaser (c), and the price (d).

Procedures	MINISTRY OF DEFENCE	MUNICIPALITY OF LYON	RATP
	<i>Central Government</i>	<i>Local Government</i>	<i>Urban Transport Agency</i>
Selling decision <i>on advice</i>	MINISTER OF DEFENCE <i>Inter Services Advice</i>	LOCAL COUNCIL <i>Advisory Committee</i>	BOARD/ Patrimony Department <i>Operational Services</i>
Trading structure	M.r.a.i. (commissioned service)/ The Engineers	Estate Agencies/ Notaries	Patrimony Department/ Sub-company (commissioned)
Ref. price <i>on advice</i>	THE EXCHEQUER <i>M.r.a.i.</i>	Private Experts THE EXCHEQUER	a field survey THE EXCHEQUER
Selling price	THE EXCHEQUER <i>(compulsory approval)</i>	LOCAL COUNCIL <i>(firm and definite price)</i>	Patrimony Dep./ Sub-company <i>(negotiable)</i>
Priority purchasers	Other Ministries Local Authorities leasing-occupier	Social Housing Agencies leasing-occupier	Local Authorities Social Housing Companies
Final approval	MINISTRY OF DEFENCE + THE EXCHEQUER	LOCAL COUNCIL	BOARD (over 1 million Francs) + LANDOWNERS

Fig. 3. Negotiation procedures

4.1. The decision to sell

The decision to sell real estate is relevant to internal government objectives. It is always made at the top level of authority: the Minister of Defence, the Town Council, or the Board of Directors of the RATP. At the RATP, for industrial purposes, the Department of Estate Management is allowed to make a decision involving up to 1 million Francs.

Decisions are subject to the routine approval of internal services, so as to confirm the legitimate nature of the sale. But the Town Council of Lyon has overtly declared its determination to avoid any suspicion of internal corruption

and requisitions the services of an advisory committee⁶ of outside specialists, well known and highly regarded professionals operating on the real estate market. The committee guarantees fair dealing throughout the proceedings.

It is noteworthy that technical details have been neglected by the decisions. Difficulties often arise from property rights or parcel partitions. The deficient quality of facilities may also entail security problems, pollution or network system redistribution. They may be tackled subsequently, during the bargaining process. At the worst, they will come out at the closure of the proceedings, when the deed is written up. This stems from a lack of foresight where either party is concerned, and also from impediments which hinder inspection, especially in regard to public property. The cost of inspection is a recurrent problem, and who will pay for it a sensitive question! When there is no legislation that covers the matter, the cost is subject to negotiation and enters into the final price.

4.2. The trading delegation

Government departments isolate these operations from their regular administration and delegate a specific committee for trading.

The committee may be an internal service. The Ministry of Defence has commissioned a small group of qualified officials called MRAI.⁷ The duty of this trading committee is first of all to select the proper channel of trade, whether by auction or by negotiated sale. The selection takes into consideration political factors, which may be very significant, jurisdictional rules, which may be merely routine, and the market demand. Secondly, the committee must find a potential purchaser who will be acceptable to all parties concerned: the hierarchy and, to some degree, the local partners. Finally, sales conditions have to be negotiated. The committee is subordinated to the hierarchy, although it appears to have its own way as it works towards commercial objectives, unusual in the Army.

The RATP has an estate management department in charge of real estate dealings. But large scale operations such as we have described are entrusted to subcontractor branch agencies. The branch agency is commissioned to find purchasers and negotiate prices. It often invites bids from private investors, while adhering to the usual public channels for advertising. It may also buy the

⁶ Members of the committee are: the President of local Notary Chamber, the President of local Chamber of Commerce, the local Presidents of the two National Federations of Estate-agents, and a representative of a private important local estate-agency.

⁷ MRAI stands for "Mission pour la Réalisation des Actifs Immobiliers".

property, develop the site, and reconstruct the buildings. In any case, branch contracts work in close collaboration with the estate management department, following RATP regulations and those of the Board's urban partners.

In both cases, the choice of the trading committee and negotiating methods appear to be guided by legal constraints or administrative concerns. In fact, in both examples, services work toward the same goals. The distinctness of Lyon town council's position lies in its contract with two networks of private Estate Agencies. The Agencies are commissioned to find purchasers at a price set by the town council. The Council ratifies the Agency's proposal and settles the sales conditions. Separate functions are clearly delegated to each of the parties involved. The task of the Agency is trade, and the town council must not interfere. The Council and its advisory committee demand neutrality facing whatever decision may ensue.

4.3. Restrictions concerning purchasers

There are special restrictions pertaining to purchasers. Some rights of pre-emption or priorities must be observed. Pre-emption is one of a tenant's legal rights. Local authorities may enforce this right as well. Priorities may also be decided by institutional policy. The Army recognises the pre-emptory first rights of other government ministries and of town councils. Lyon has chosen to grant precedence to welfare housing agencies. The RATP has also contracted to favour welfare housing objectives in its developmental programs.

In most cases, the priorities declared have followed suit, and it appears that more than 50% of the Army's sales have been made over to city districts. Since January, 1998, 90% of the buildings offered for sale in Lyon have been bought by their own tenants. During this brief period, welfare housing agencies have not appeared to be attracted by public buildings in Lyon. But it is still too early to come to any conclusion. It may be added that pre-emption rights for local authorities often bear on negotiations but are rarely enforced.

Apart from the aforementioned priorities, no particular guarantees are apparently required from the purchaser. In fact, Lyon submits the purchaser's offer to the approval of the local council, and the Army takes into consideration the purchaser's declared intentions. In both cases, and at the RATP as well, government bodies want to keep an eye on the subsequent development of the sites, and to forestall undesirable re-use or speculative finagling. Limitative clauses are often appended to the sales contract with this in mind.

4.4. Restrictions on price

Prices are severely controlled in order to avoid discrepancies from normal market prices. A basic price, or reference price must always be given before negotiations start. The Government is bound to adhere to the valuation given by the Taxation Services of the National Revenue Department (the Ministry of Finance). Other public bodies generally receive information on the tax valuation. Despite this fact, their reference price is directly quoted by the market, through a private valuation expert in Lyon, or a field survey at the RATP.

Price control by public institutions varies greatly. Price offer is definitive in Lyon. The sale must be made at the reference price ratified by the local council and approved by the advisory committee. That means there can be no bargaining. In other words, while the price may be fair, the right to bargain, a basic rule of the free market has not been respected. Anyway, the buyers have not disputed this situation so far; they appear satisfied with the offers that have been made.

More surprisingly, at the Ministry of Defence, price negotiations are carried on. But selling prices must be ratified by the Ministry of Finance. One problem is setting a fair price for land that is well located, but encumbered by structures which may have to be demolished. Another problem is that the sales price of the property is sometimes confusedly coupled with the grievances expressed by local partners due to their economic losses as a result of military withdrawal and cutbacks. A recent study⁸ covering sales contracts over the last ten years, indicates that average sales prices are close to the market prices on given equivalent realty markets. A moderate rebate is generally granted especially when the purchaser is a town council. Prices take into account the main realty market determinants, such as location in the city, distance from transport connections, or the degree of local dynamism. They have led to fair bargains and indicate a capacity for conversion in the city.

At the RATP, bargaining is unrestricted. The sale is supposed to go to the highest bidder. It may occur, however, that reduced offers are made to 'welfare' buyers.

Through varied methods, it appears that sales prices on public real estate follow the market trends, with a slightly subdued average rate for various particular reasons. Restrictions tend to forestall overt speculation from buyers and to moderate bids on the part of the selling parties.

⁸ Cf. Guelton (1998).

5. CONCLUSION

Considering the record of sales contracts in the organisations we have dealt with, we may underline a certain pattern of procedures.

Bargaining of the private type seems to suit the public's desire to get free of the trammels of administrative practices and to stimulate more efficient management methods. The RATP has provided a successful example of enlisting private investors to operate on behalf of public policy. But other observations prevail. It is clear that the search for private-type methods in public bargaining is a means to penetrate the market and to attract purchasers, especially in conversion deals. Negotiations are a means of assembling local interests so they can co-operate. It takes time to organise conversion projects, and developers need technical guarantees from their urban partners. Auctions do not provide any such guarantees.

Meanwhile, the contribution of public commitment cannot be denied. This is obvious in view of the results and the record of sales contracts.

Bureaucratic restrictions are increasingly present the more centralised the government is – as we have shown in figure 3. As far as town councils are concerned, their constituents (voters) are in command and they belong to the private sector. On the contrary, at the RATP, power belongs to the trustees and largely relies on government institutions.

Restrictions may seem cumbersome. They are certainly disturbing, for they are often at variance with market rules, but they still seem the least incongruous way of maintaining needed public commitment.

Besides their effort to strike profitable bargains, the record of sales contracts underlines the commitment of authorities to local development. That is the aim of negotiating. The selective choice of purchasers, with regard to their projects, is another contribution. The initiatives of the Army, in financing studies for development, and of the RATP with its subcontractor branches, prove that civic-mindedness in official circles is not synonymous with stodgy bureaucracy.

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