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8 February 2016

**By email and post**

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Our ref C6/CRNB/DS/6673902  
 Matter ref 149631/000016

For the attention of Howard Bone

Dear Sirs

**SILVERHILL, WINCHESTER - DEVELOPMENT AGREEMENT DATED 22 DECEMBER 2004 MADE BETWEEN WINCHESTER CITY COUNCIL (1) THORNFIELD PROPERTIES (WINCHESTER) LIMITED (2) AND THORNFIELD PROPERTIES PLC (3) (AS AMENDED) (THE "DA")**

1. We write on behalf of our client, Silverhill Winchester No. 1 ("**SW1**"), in relation to the DA and in particular your letters of 15 January 2016 and 29 January 2016. In those letters you informed us that:
  - (a) On 13 January 2016, the Cabinet had resolved that it was minded to decide that, unless all the Conditions in the DA were satisfied by 9 February 2016, Winchester City Council (the "**Council**") would serve notice on SW1 to terminate the DA (but subject to consideration of the views of the Overview and Scrutiny Committee and full Council).
  - (b) On 28 January 2016, full Council made a recommendation (the "**Recommendation**") to the Cabinet that it serve notice to terminate the DA with immediate effect; and
  - (c) The Recommendation would be considered by Cabinet on 10 February 2016, when a final decision on termination will be made.
2. The purpose of this letter is to reiterate our client's grave concern as to any such decision to terminate the DA at this point. In particular, it would be irrational and unreasonable, and therefore unlawful, for the Council to terminate the DA before the determination of the appeal (the "**Appeal**") in respect of the claim for judicial review (the "**Gottlieb JR**" and together with the Appeal, the "**JR proceedings**") brought by Mr Gottlieb, in which the High Court found that the variations to the original scheme were unlawful. That Appeal is due to be heard on 24 May this year.

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3. The reasons for this are explained below: in short, the Gottlieb JR is at the heart of the inability of our client to satisfy the outstanding conditions in the DA by 1 June 2015, thus triggering the power to terminate on the part of the Council. It is highly material to the Council's discretion to exercise that power that the power has arisen by reason of a judicial review action that is the subject of an on-going appeal. The same can be said of the current position. To exercise the power before the legality of the acts giving rise to the power itself has been established, in circumstances where that exercise of discretion would deprive our client of valuable possessions, would be unlawful.
4. First, the JR proceedings have prevented SW1 from finding an investor willing to provide the necessary funding to develop the scheme. This is due to the perceived risks attached to an investment in a development where key terms of the DA are not settled. SW1's inability to obtain funding was a primary factor in our client's being unable to satisfy the outstanding conditions in the DA by 1 June 2015.
5. Secondly, the JR proceedings have forced SW1 to revert to the original scheme. The uncertainty regarding the extent to which evolutionary changes to the design of the development scheme are lawfully permitted including those necessary to comply with legal and regulatory developments (such as changes in building regulation standards) and the Council's unwillingness to consider these has made it even more challenging for SW1 to find a funding partner. If the Appeal is successful, SW1 would then have the opportunity to revert to the 2014 Scheme and have clarity on the variations that can be lawfully made under the DA. Our client is confident that it can relatively quickly exchange a funding agreement with an investor when it has these certainties.
6. Thirdly, there is a real prospect that our client will be successful in the Appeal. As you will be aware, our client obtained permission to appeal on all grounds on 11 November 2015. Such permission is only granted if the appeal has a real prospect of success. Further, in granting permission to appeal, Lord Justice Lewison expressed his concern as to the robustness of the first instance decision, saying:

*The practical consequences of the [first instance] judge's decision are obscure, to say the least, and whether Mr Gottlieb has a sufficient interest to bring the challenge at all is a serious point and is worthy of consideration by the full court.*

Therefore, whatever the Council's assessment of the merits of the Appeal, it is evident that our client's case is, as stated in their letter to you of 26 January 2016, "*sufficiently strong to warrant a delay to any termination process.*"

7. If the Council were to terminate the DA prior to the conclusion of the JR proceedings, it would deprive our client of its valuable contractual rights under the DA and potentially of the benefit of its cause of action in the Appeal and that decision would be based on a first instance judgment that may well be found to be wrong in law.
8. Our client remains committed to the Silverhill Development in Winchester. It is for this reason that it has:
  - (a) agreed to fund the Appeal;
  - (b) progressed satisfaction of the conditions of the 2009 planning consent; and
  - (c) agreed to fund the service of Notices to Treat in order to preserve the existing CPO.
9. It has no wish now to see its substantial investment to date vitiated and the Council exposed to unnecessary further legal risk, which would arise from a premature termination of the DA.

10. Our client therefore seeks reassurance from the Council that (a) it will not terminate the DA until it has been given a reasonable period of time to satisfy the outstanding conditions, which our client suggests is 9 months after the JR proceedings have been finally determined; and (b) it will implement the proposal from SW1 in relation to the service of Notices to Treat as set out in the letter from SW1 dated 26 January 2016.

Yours faithfully

A handwritten signature in black ink that reads "Hogan Lovells International LLP". The script is cursive and fluid, with the words connected together.

Hogan Lovells International LLP