

Silverhill Winchester No.1 Limited

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COMPANY NUMBER 04057646

Simon Eden
Winchester City Council
City Offices
Colebrook Street
Winchester
SO23 9LJ

Tuesday 26th January 2016

Dear Simon

Re Winchester Silverhill

I am writing to clarify several matters concerning Silverhill Winchester No. 1 Limited in relation to the current circumstances it and its guarantors are experiencing in Winchester.

I think you will agree that throughout our relationship we have demonstrated every support and commitment possible in respect of advancing this regeneration project for the City and continue to do so. This is evidenced by its willingness to pursue the appeal of the procurement judgement as well as seeking to secure the existing planning consent for the scheme by addressing the outstanding planning conditions. I am sure you will be aware both these activities involve significant cost. Needless to say we would not have been prepared to incur these ongoing costs if we were not confident both in relation to the outcome of the appeal and our ability to go "unconditional" with Winchester City Council, as provided for under the development agreement.

A further demonstration of our commitment is our offer to underwrite all the costs and claims arising from the Council serving Notices to Treat (NTT) on the third party landowners within the site. Given the misunderstanding regarding the extent of the costs we are prepared to underwrite, I attach a summary schedule which deals with all the material aspects of the underwriting. I invite you or your officers to revert to us if you identify a potential expense which you feel has not been captured. Our offer to underwrite the NTT process is further evidence of our confidence in our ability to progress the scheme following the appeal outcome.

At the current time we have made clear our RSL partner remains committed to enter into an agreement in relation to the affordable housing element of the scheme. We still face a challenge to secure a funding partner. A difficulty we have encountered relates to the risks that exist for a funding partner given the restrictions on making evolutionary changes in the design of the scheme as part of the schemes implementation and to the overall political uncertainty brought about when an incumbent councillor brings legal action against his own council.

In the last few days your solicitors have forwarded their notes of the meeting in September with Counsel. Putting to one side the fact that these notes are yet to be confirmed by Counsel, they do not help address the issue in relation to the funding position. Both a developer and more importantly a funder requires certainty. This is an issue of investor

perception and not "law". As you will appreciate, our manager, TH Real Estate, is a global investment management company and it cannot identify any situation where a third party would be prepared to fund a project where there is ongoing litigation in respect of the interpretation of important terms within a development agreement. The investor perception of abnormal risk has been increased by the ongoing action of Cllr Gottlieb who has sought to destabilise matters by making direct contact with our funding partner in an attempt to seek their withdrawal from the project.

I am sure you have assessed the chances of a successful appeal but we obtained leave to appeal on all the matters of the judgement we presented and an additional item was added by the judge. We consider our case to be sufficiently strong to warrant a delay to any termination process.

I feel I should make some observations on the suggestion being promoted by parties who are campaigning in favour of the idea that a low height development of no more than three or four levels should be implemented on the site. There is an ideological argument as to whether or not a City should be allowed to grow naturally and if so, it is perfectly correct that taller buildings are well sited in a City centre - being a sign of its economic health and prosperity as well being a sustainable form of development on brownfield land.

We also need to have regard to what is economically possible and must not mislead public expectations. You will be aware of the land acquisition costs of the site. Ignoring all the exceptional costs attached to the site in relation to archaeology as well as those of flood planning and the significant risks associated with excavating accommodation levels, the simple fact is that the site will require four levels of development simply to meet the site purchase and construction costs. If this was not the case we would easily be able to reduce the development's height. We would further comment that despite being well resourced those campaigning against the scheme have yet to come forward with any costed alternative proposals to demonstrate that a lower scale development is economically possible.

Finally, whilst we share the Council's frustration at the obstacles we have encountered in advancing this project, we have clearly demonstrated our continued commitment to the redevelopment of Silverhill and it would be unfair for pre-emptive action to be taken by the Council prior to the conclusion of the judicial review process.

In the context of the life of the project and the exceptional challenges it has had to face together with the ramifications of the judicial review and the ongoing opportunity to challenge that judgement, we feel the Council's on going patience is a reasonable expectation.

Kind regards,



David Pearce

Silverhill Winchester No. 1 Limited

Further detail on the proposal for the CPO Indemnity from Silverhill Winchester No 1 Limited (the "Developer") (guaranteed by the Henderson UK Property Fund) in respect of Winchester City Council (the "Council") serving Notices to Treat under the Winchester City Council (Silver Hill) Compulsory Purchase Order 2011 (the "CPO")

1. At the request and at the direction of the Developer the Council will serve Notices to Treat on those landowners specified by the Developer.
2. The Developer will provide an indemnity for the costs incurred by the Council in connection with service of the Notices to Treat.
3. The indemnity will cover the following costs properly payable as a result of the service of the Notices to Treat:
 - i. costs of serving the Notices to Treat;
 - ii. costs to which the landowner's are lawfully entitled;
 - iii. compensation the Council is obliged to pay:
 - a. in respect of successful blight and additional land claims;
 - b. to acquire land interests following service of the Notices to Treat; and
 - c. the costs of dealing with any such claims;
 - iv. costs of dealing with any legal challenge arising from the service of Notices to Treat; and
 - v. costs of withdrawing the Notices to Treat in line with paragraph 5 below.
4. The Developer requires controls over the service of the Notices to Treat, dealings and negotiations with landowners and any referral to the Tribunal for compensation to control, as far as possible, its financial liability under this indemnity. Notices will not be served for leases where the Council can operate break rights.
5. If the Development Agreement dated 22 December 2004 (the "**Development Agreement**") is terminated by either party, the indemnity will only apply to costs that the Council is unable to cease incurring. The intention is to reflect the principles of clause 16.2 of the Development Agreement.
6. If the Development Agreement is terminated by either party, any land that has been acquired by the Council under the CPO will be dealt with in accordance with the provisions of clause 16 of the CPO Indemnity Agreement dated 18 November 2011 (as amended) (the "**CPO Indemnity Agreement**")
7. The CPO Indemnity Agreement provides a framework for the indemnity proposal.
8. The proposal is on the basis that the Council agree not to terminate the Development Agreement for a period of at least 9 months from date the court proceedings in respect of the procurement judgement have been disposed of leaving the Council's decision to amend the Development Agreement in place.

