

12 January 2016

By email only (lesley-anne.avis@blplaw.com)

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For the attention of Lesley-Anne Avis

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Our ref 5323045
Matter ref 149631/000016

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 "DEVELOPMENT AGREEMENT")

We act for Silverhill Winchester No.1 Limited, the Developer to the Development Agreement and you act for Winchester City Council, the Council pursuant to the Development Agreement.

Our client has instructed us to express its concerns as what it sees as your client's unreasonable approach to preparing the report of the Silverhill Project Management Team for the Cabinet and the Overview and Scrutiny Committee on 13 and 18 January 2016 respectively and for the Full Council on 28 January (the "**Report**"). The Council has not engaged with the Developer to address the queries that the Council obviously has from our client's letter of 22 December 2015.

Our client considers that because of your client's misinterpretation of our client's letter of 22 December 2015 and our client's position on several points, the Report draws conclusions that are not correct. Additionally, without sight of the legal analysis that you have provided, Exempt Annexure 4 to the Report, our client cannot verify that the legal analysis and conclusions are sound.

In particular, our client has instructed us to draw to your attention the following points:

1. Our client considers that the period of nine months following disposal of the Appeal proceedings is sufficient to satisfy the Conditions to the Development Agreement. Our client's proposal is to satisfy the Conditions on the basis of the scheme following the variations that were approved in 2014 and the associated planning consent (the "**2014 Scheme**"). Any additional variations that may be required to the 2014 Scheme will be considered and consents sought after the Unconditional Date to the Development Agreement.
2. Our client's letter of 22 December 2015 states the Developer will be responsible for the costs incurred by the Council from serving the Notices to Treat. This has been misinterpreted in the Report. The correct interpretation is that the Developer will be

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responsible for the costs of serving the Notices and all costs that are incurred as a result of serving these Notices. This will include compensation that is payable from serving the Notices to Treat but, to further clarify, not any costs or compensation that result from serving any subsequent Notices of Entry or acquiring any interest.

3. An option B is set out in the Report at paragraph 7. However, the Developer has not offered to progress the Appeal without an extension of time under the Development Agreement and it is wrong to assume that it will do so.
4. The Report implies that the Developer may unilaterally seek an amendment to the financial terms agreed under the Development Agreement. This is not the position put forward by the Developer in its letter of 22 December 2015. If the Developer agrees to variations to the scheme proposed by the Council, and these variations have a material effect on the viability of the scheme, there may need to be a variation in the economic mechanism to facilitate these positive changes.
5. Paragraph 3.13 of the Report implies that the Developer has misinterpreted the advice of Leading Counsel. The references in the Developer's letter of 22 December 2015 to Leading Counsel's opinion are based on the recollections of the Developer's representatives that attended the conference. Although we have asked several times, and the Report refers to the opinion being received jointly by the Developer and the Council, neither this firm nor the Developer have ever received the opinion. Withholding this information has a material effect on the Developer's position and the proposal that it has been able to put forward.

Without resolving all queries that the Council may have on the Developer's submission, properly interpreting the Developer's position and providing the Developer with all necessary information to enable it to make full representations we do not see how it is possible for the Council to make a decision which is reasonable and based on all of the relevant factors which it should take into account.

Should you or your client require clarification or further information in respect of any aspect of our client's position, please let us know.

Yours faithfully

D-Loza Powell Franks LLP