

Date: 15 January 2016
Our ref:
Your ref: 5323045
DDI: +44 (0)20 3400 4062
e-mail: Lesley-Anne.avis@blplaw.com

For the attention of Oliver Chamberlain
Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London EC1A 2FG

Dear Sirs,

Silverhill Winchester

We refer to your letter of 12 January sent by email at 22:24 PM and received yesterday morning.

Our client was disappointed by the nature and timing of your letter.

It contains an inaccurate and selective chronology of events and makes various claims which are misconceived and untrue. Regrettably, it appears it was designed to obfuscate our client's consideration of matters at the Cabinet meeting on 13 January. We respond to the points raised in your letter as follows.

1 Preparation of the Report for Cabinet

Despite what you say, our client's approach to the preparation of the Report was reasonable and appropriate. Further, bearing in mind the forbearance which our client has shown over the years since the development was taken over by your client and the collaborative way in which our client has tried to work with yours, our client considers the steps it took at the Cabinet meeting to be entirely reasonable (on which see further below).

2 Your client's letter of 22 December 2015

Our client's letter of 3 December raised a number of issues of concern and requested a response from your client by 18 December so that your client's response could be properly considered ahead of the holiday period. In the event, your client's response arrived on 22 December.

You say that the Council "has not engaged with the Developer to address the queries which the Council has from your client's letter of 22 December". The Council considered that the letter set out your client's position sufficiently clearly and (although it might not agree with your client's proposed way forward,) there was no need to revert back to your client to seek clarification.

Your suggestion that you ought to see our legal advice to our client is somewhat bizarre. Over the years on this project where our respective clients' positions have been aligned we have sought joint advices from counsels and shared our own advices and your firm has done the same. This is clearly not an instance where their positions are aligned so you cannot realistically expect us to share with you legally privileged advice which we give to our client, in the same way that the Council would not expect to see the advice you have given to your client on its position.

To: For the attention of Oliver Chamberlain
Date: 15 January 2016
Page: 2

3 Your letter of 12 January 2016

We set out below comments by reference to the numbered points in your letter:

- 1 Your client's letter of 22 December refers to them bringing forward the 2009 scheme, and the July approvals from the Council were given on the basis of that scheme; whereas your letter of 12 January 2016 says that your client proposes to proceed with the 2014 scheme. This represents a significant change in your client's position within a period of a few weeks. In order to progress the 2014 scheme (or a further variation to it) your client would have to be successful in its appeal against the decision in the judicial review proceedings, and if successful there would have to be no appeal to the Supreme Court, none of which is assured. This is notwithstanding the need for a further variation to the Development Agreement, the completion of a section 106 agreement and the grant of planning permission for the 2014 scheme. In addition you refer to further variations following the Development Agreement becoming unconditional. In our client's view, the potential timescales and uncertainty around the position are such that it cannot agree to your client's proposals. It will, however, continue to work under the Development Agreement and (provided the Development Agreement becomes unconditional before 9 February) implement the CPO in accordance with the procedure set out in Part B of the Indemnity Agreement. However, it does not accept that it is under any obligation to give your client any further forbearance, given the time that has already elapsed and the lack of progress to date.
- 2 As regards the proposed indemnity we do not consider that your client's letter of 22 December has been misinterpreted, and we note that your letter clarifies and indeed extends the proposed extent of the indemnity. The Development Agreement is clear that the indemnity by the Developer will not apply to the service of Notices to Treat until the Development Agreement and therefore also the Indemnity Agreement have become unconditional. We do not consider that there is any confusion or lack of clarity/certainty in the terms of either document which would require any confirmation as to the interpretation of their terms. As such the only way to record what your client has proposed is by a variation to the terms of the Indemnity Agreement.
- 3 We are not aware that your client has ever said that their decision to appeal the decision in the judicial review proceedings was subject to the Council agreeing to a nine-month extension following the decision in the appeal proceedings before which it will not serve notice to terminate the Development Agreement. Indeed this proposal for an extension was only recently requested, sometime after your client's decision to appeal, that decision itself having been made in the knowledge that the Council would not appeal the judgment.
- 4 Your client's letter refers to a number of proposed variations to the scheme and states "...I welcome WCC's consideration of a variation in the economic mechanism to facilitate the above positive changes". As the Council had not agreed to consider changes to the "economic mechanism" it was not unreasonable to interpret the letter as indicating that "this may be an indication that SW1 would be looking to change the financial arrangements".
- 5 Your letter alleges that BLP are withholding Counsels' advice from you and that the withholding of this information has a material impact on the Developer's position. That allegation is disingenuous and untenable and our client is disappointed you have made it.

To: For the attention of Oliver Chamberlain
Date: 15 January 2016
Page: 3

You fail to mention that both Oliver Chamberlain and Kate Rees of your firm accompanied your client to the conference on 21 September 2015. They listened to and took notes of Counsels' advice. In any event, we have now provided you with a copy of our attendance note of the conference (which we are asking Counsels to approve) which confirms the advice given to both parties and we are seeking sign off from Counsels.

4 **The Council's decisions and the way forward**

The decisions made by Cabinet on 13 January were not made lightly and were made following detailed deliberation of all relevant matters relating to the project. At the various Council meetings in July members accepted your client's assurances that they expected to satisfy the 3 outstanding conditions under the Development Agreement within the following 6 to 10 weeks and to be on site by December 2015. They are now very disappointed at the lack of progress, the request for a further delay and your confirmation that they do not propose to progress the 2009 scheme at all but only the 2014 scheme, and only then if the appeal is successful. This has put the Council in an invidious position and in all the circumstances it is difficult to see what members can be expected to do other than to decide to serve a termination notice if the Unconditional Date has not been achieved by close of business on 9 February, in advance of the further Cabinet meeting on 10 February.

Yours faithfully



sbon\46360005.1