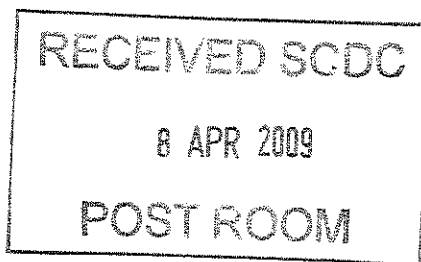


Your ref: DPB/rs/4/24823  
Our ref: 01923 272819  
dd: 01923 262670  
df: derek.bromley@bidwells.co.uk  
e:  
Date: 6 April 2009



Mr G Duthie  
The Legal Office  
South Cambridgeshire District Council  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
CAMBRIDGE  
CB23 6EA

49 High Street  
Kings Langley  
Hertfordshire WD4 9HU  
t: 01923 264264  
f: 01923 260674  
bidwells.co.uk

Dear Mr Duthie,

**RESIDENTIAL DEVELOPMENT ASHWELL ROAD, STEEPLE MORDEN NEAR ROYSTON  
YOUR REF : GAD/SCA/PLASEC.2876**

We refer to our meeting at your offices on 20 March, with regard to the above.

At the meeting we reported the position with regard to the lack of progress concerning the sale of the affordable housing units. Since that meeting, we have been in further correspondence with Housing Associations, including Circle Anglia, a former interested Association, to see if this matter could be resolved by a sale. Unfortunately, it is apparent that it is now very unlikely that any Housing Association will want to purchase for shared ownership. You will be aware that the Unilateral Undertaking only requires for the dwellings to be offered for shared ownership.

Our client and its legal advisers take the view that it has met its obligations under the Unilateral Undertaking, and is now free to sell these dwellings in the open market. We note the Council takes a different view due to a very minor legal technicality which, in our opinion, the practical implications of which are extremely unlikely and very remote. This legal technicality is that the road owners are not obligated to maintain and repair. The imposition of a Positive Covenant to repair would not of itself be enforceable against subsequent owners.

The reasons we do not believe the legal technicality regarding the obligations for road maintenance has any practical effect are, as follows :

1. Our client's solicitor has already indicated that the type of legal arrangements regarding the road maintenance are not untypical given the nature of this development and the sale of freehold houses and, furthermore, he has used this type of legal arrangement in many instances before;
2. Circle Anglia Housing Association's solicitors, Eversheds, approved the contract terms where the same legal arrangements for road maintenance were provided;
3. The road owners also own properties within this development which are substantial houses and the value implications for their properties of not properly maintaining the road would be far greater than for the owners of the affordable houses. In the circumstances, the road owners have a greater interest in properly maintaining the road not only because they use a greater length to gain access to their properties, but also in pure financial terms;

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4. The road has been constructed to adoptable standards and given the fact that it only serves six private dwelling houses the likelihood of any significant road maintenance being required for decades is remote having regard to the expected level of traffic movements and types of vehicles using the road.

Even in the very remote circumstances that the road owners do not maintain the road and in 30 years or so maintenance is required, there is nothing which would prevent the other owners taking a proactive approach and filling in potholes.

For reasons which we will provide later, we do not consider a variation to the contract terms in respect of properties already sold on the estate will resolve the situation at an economic cost. In our view, because the practical implications from the legal technicality are so remote, this could be dealt with as a valuation issue, and the Unilateral Undertaking provided the mechanisms for resolution by reference to an expert. If it is not a valuation issue, then the implications are that the legal technicality is of such substance that the properties are virtually unsaleable. We do not believe that this is correct. We offered to Cambridge Housing Society (the most recent Housing Association interested in purchasing the property) the way to resolve the matter was by the appointment of an independent expert, however, they refused to participate in the procedures.

From information provided to us by Housing Associations, the evidence indicates that the withdrawal of the Housing Associations in purchasing these properties on a shared ownership basis is because they are simply not considering the acquisition of the properties for shared ownership, and are seeking to reduce exposure to sales income by reducing the number of shared ownership units on their books, not increasing them.

We believe that we have now reached a stage of an impasse which can only be resolved either by Court proceedings for a Declaration on the point (as referred to in your letter of 4 February 2008), or in the alternative a Deed of Variation. Without prejudice to our client's position that it has satisfied the terms of the Unilateral Undertaking and is free to sell all the houses in the open market, we wish to explore further with you the possibility of the Deed of Variation, however, before doing so, set out briefly below the events that have brought us to this current position.

Chronological order of events (see accompanying attached documents which support the events) :

30.10.2006	<p>Offer by Circle Anglia/Wherry Housing Association - £300,000</p> <p>By 15 March, after Marchfield pressing, Circle Anglia receive Board approval to proceed and Eversheds solicitors were instructed. There is no reasonable explanation why Circle Anglia should have taken this length of time to get Board approval, and the result of this inactivity was a delay of six and a half months</p>
10.07.2006	South Cambridgeshire District Council approve Circle Anglia
30.08.2006	<p>Draft contract sent to Eversheds. Delay in sending out the contract is acknowledged by Marchfield.</p> <p>From September through to January 2007, Marchfield's solicitors press Eversheds to respond to draft contracts, and advised them of the terms of the Unilateral Undertaking regarding the time for completion</p>
17.01.2008	Contract is approved
06.02.2008	Marchfield e-mail Circle Anglia suggesting that since October 2006 house prices have increased and using the Nationwide house price index as the basis whether the Association was prepared to increase the offer to £320,000
07.02.2008	Circle Anglia respond accepting that prices have increased
07.02.2008	<p>Circle Angle are invited to obtain a revised valuation.</p> <p>This deal does not proceed for reasons which remain unclear.</p>
08.07.2008	Eversheds confirm that Circle Anglia are no longer proceeding with the matter
05.08.2008	South Cambridgeshire Council advise Marchfield's solicitors that the Housing Association did wish to proceed, but not at the inflated price. They also confirmed that the Association's original offer still stands
11.08.2008	Marchfield confirmed to their solicitors that during discussions with the Development Manager of the Housing Association he confirmed the Association would not be interested in the project given the difficulties faced in the market, and explaining that they had pulled out of two transactions
18.08.2008	Marchfield e-mailed the Housing Association referring to the Council's solicitors' assertions that they would be interested in purchasing at the original price
19.08.2008	Housing Association confirmed that they would proceed but at a maximum of 75% of the lowest of two open market valuations, and they would only proceed at £300,000 if the lowest valuation were £200,000 per unit
01.09.2008	<p>Marchfield confirmed that they are prepared to consider a sale and that Circle Anglia should arrange for the valuations to be undertaken.</p> <p>Nothing further is heard from Circle Anglia on the subject</p>
10.10.2008	Cambridge Housing Authority/Flagship offer £250,000
31.10.2008	<p>Cambridge Housing Society/Flagship-Housing confirm approval to purchase the properties for £250,000.</p> <p>Contracts are sent out to the solicitors.</p>
08.01.2009	Confirmation that Cambridge Housing Society has withdrawn from the purchase, blaming this on the maintenance provisions with regard to the access road
12.01.2009	South Cambridge District Council suggests as a means of addressing the issue whether Indemnity Insurance could be obtained

29.01.2009	Countrywide Legal Indemnities confirm that the risk is not an insurable risk
March 2009	Exchange of e-mails with Cambridge Housing Society to see if the matter can be resolved by valuation
10.03.2009	The proposal to get the matter resolved by an expert is rejected by Cambridge Housing Society
17.03.2009	Cambridge Housing Society indicate a willingness to consider buying the units as affordable rented housing, subject to agreeing price in the current market, and obtaining a grant from the HCA, requiring their costs to be covered and a variation to the Section 106 Agreement, and if these terms and conditions are satisfied, they will consider making an offer price. (It is interesting to note that no conditions refer to issues relating to resolving the road maintenance position the very reason given for not proceeding with the purchase). The terms and conditions of the offer proposal were not accepted by Marchfield.
19.03.2009	Luminus Group confirmed that they are not interested
20.03.2009	Sanctuary Group indicate that they have no interest in the acquisition for shared ownership, and the site would be unviable as rented properties
31.03.2009	Circle Anglia confirm its position as to why it did not proceed, which was that the market started changing significantly and the Housing Association sought to reduce its exposure to sales income by reducing the number of shared ownership units it had on its books.

In all, Marchfield has approached nineteen Housing Associations.

As indicated above, following the withdrawal by Cambridge Housing Society, Sanctuary Housing has confirmed its reasons for not having an interest in these units, and this is underpinned by Circle Anglia and we can think of no reason that the views of these Associations will not equally apply to other RSLs.

At our meeting, the Officers confirmed that the Council would have no interest in purchasing these properties.

From the evidence indicated above, our view is that Marchfield has done everything reasonably expected by the Unilateral Undertaking in complying with it's terms and conditions. The period of 6 months is about to expire since Cambridge House Society agreed the price, and prior to that Circle Anglia having greater than 6 months to complete even allowing for the delay in sending out the draft contract.

At present, my client is faced with the prospect of three properties having remained unoccupied since practical completion (February 2008), that is the two affordable houses and the last private market house which cannot be occupied until the affordable houses are sold.

It would be unrealistic to expect that an approach to the owner's of the road to vary the legal terms of the maintenance would produce an outcome which was viable. Moreover, our understanding is that such an alteration to the legal terms and its implications would be cumbersome and impractical given that the properties are being sold freehold. We must expect that road owners would be professionally advised in any such matters, and enquiries would reveal the purpose of the variation and the implication it has to the disposal of the affordable housing having regard to the stance now taken by the Council. Notwithstanding, that a variation has little or no financial consequence to the road owners, it would be seen to be of potentially high worth to the developer given the Council's position, and the professional advisers of the road owners would seek a ransom to reflect this position.

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At our meeting, the Planning Officers indicated that because of the market they were prepared to accept variations to Planning Agreements where developers can show that due to market circumstances, the schemes are no longer viable. Whilst the officers made reference to situations prior to the commencement of schemes, there is no reason that the principle cannot or should not be used in the circumstances with which we are currently faced at Steeple Morden. We enclose Development Appraisal which uses the actual land and build costs, actual sale prices where achieved, and for those properties which remain unsold, the current price expectation. This produces a developers' profit of only £3,681.00 on the scheme with an overall value of a little under £3 million and a percentage profit of 0.14%. As the banks currently demand for funding purposes that developers' appraisals show a minimum of a 20% profit margin, this effectively means the scheme could not start in today's market as no funding would be available. This is simply a case of Marchfield trying to break the impasse and bring into useful occupation the units on the site in accordance with the Unilateral Undertaking. We believe this more than adequately justifies officers reviewing this matter.

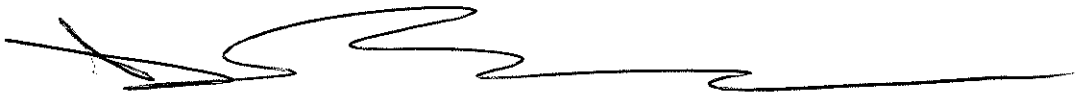
As the education contribution in the Unilateral Undertaking has been paid, the only matter of any substance within the Unilateral Undertaking remains the affordable housing.

Our client is prepared to offer the following terms for the Unilateral Undertaking to be extinguished :

1. A commuted payment of £50,000.00 for the provision of affordable housing within South Cambridgeshire to be used within 5 years or repaid.

I would be grateful if you would liaise with Officers and local Councillors with regard to these proposals, and we look forward to hearing from you in the near future. I confirm that we would be happy to attend another meeting to progress this matter. As I am sure you can appreciate in the current market with static or potentially falling values, my client is not prepared to sit and do nothing about realising the asset value of three properties within this development.

Yours sincerely,



**DEREK BROMLEY**

Encs.