

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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DATE: 12th June 2009

Our Ref: GAD/SCA/PLASEC.2876
Your Ref: DPB/rs/4/24823

FAO Derek Bromley
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Hertfordshire
WD4 9HU

also by sent by fax 01923 260674

Dear Mr Bromley

**Residential Development at Ashwell Road, Steeple Morden
Your Letter of 6th April 2009**

I refer to the above and, as mentioned in our E-mail exchanges earlier this month, I have now met with my instructing Planning and Housing Policy Officers with a view to considering the offer set out on behalf of Marchfield Developments Limited as detailed in your letter of 6th April last.

Whilst your letter recounts in some detail the background to this matter from your client company's perspective, and as you might expect the Council does not necessarily accept all that is claimed in the same, I think it is fair to say that officers here do recognise the likely resolution of this matter lies in some alternative to on-site provision of affordable housing given the difficulties that have been encountered by your client company in discharging its planning obligation.

Without wishing to rehearse here all the various arguments that have previously been set out at some length in the correspondence passing between various parties and their representatives, I am instructed that, without prejudice to the Council's position generally, the principle of pursuing a commuted payment is one that officers feel able to recommend to Planning Committee, albeit with some reluctance where it is demonstrable that failure to deliver the outcome envisaged by the planning obligation is largely due to your client company's conduct in the matter.

Whilst officers are prepared to pursue this approach in principle, it is the case that the offer set out in the penultimate paragraph of your letter of 6th April falls short of the amount that it is felt could be recommended to Committee, as is borne out by the valuation exercise commissioned by the Council.

Where your client company's planning permission for this scheme was predicated upon two units of affordable housing being provided (that is to say permission would not have been given but for the unilateral planning obligation securing this benefit), it is considered that any commuted payment to be recommended for acceptance as an alternative to on-site provision should facilitate equivalent provision elsewhere and my advice is that the payment offered (£50,000) falls short of that necessary to secure just one unit, even allowing for current economic conditions.

Whilst your letter sets out an argument seeking to justify this offer in terms of the suggested marginal viability of the scheme, this argument is not considered to carry especial weight when contrasted with the planning need for securing the two units of affordable housing consequent upon your client company's development as described above. That a speculative development venture has apparently not yielded the commercial return envisaged is not considered to be a consideration properly off-setting the public benefit legitimately expected as a consequence of correct application of relevant policies at the time planning consent was granted nor as apply now.


Even if this argument was thought to have merit (which is not accepted), the Council's valuation advice does indicate that many of the figures relied upon in support of it are capable of being challenged in any event. However, as stated previously, the point is largely academic for the Council's purposes where the crucial factor remains the securing of the two affordable units indicated by policy through an alternative mechanism to that of on-site provision.

Consequently, if this matter is to be progressed by these means (and there is currently an opportunity to take an appropriate report to the July meeting of the Planning Committee, although time for this is tight as I mention below), then this must be on the basis that your client's offer is revised to no less than £120,000 subject to committee approval and formal variation of the planning obligation, which sum, I am advised, represents a level that would broadly facilitate realistic alternative provision in line with policy and resolve the matter.

Although you will appreciate that local district and parish councillors will need to be consulted in connection with any committee report proposed, my informal soundings taken to date do indicate that any recommendation to accept a commuted sum for less than the figure I mention in the circumstances here will be very unlikely to be entertained. I must therefore advise that if your client company is not minded to proceed on this basis then the Council will have little alternative except to refer the matter to the Courts for a declaration on the enforceability of the extant planning obligation for the reasons that have previously been set out in correspondence with your client's company's solicitor.

Without wishing to appear to be applying undue pressure for a response, if a report is to be taken to the July meeting of Planning Committee in these terms, I must hear from you by close of business on Wednesday 17th June as the report deadline is Friday 19th June.

Yours sincerely



Gary Duffie
Senior Lawyer