



York House
7 Dukes Court
54-62 Newmarket Road
Cambridge
CB5 8DZ

Ms Melissa Reynolds
Area Planning Officer
South Cambridgeshire District Council
South Cambridgeshire Hall
Cambourne Business Park
Cambourne
Cambridge CB23 6EA

PLANNING

t +44 (0) 1223 326826
f +44 (0) 1223 329346
e cwb@januarys.co.uk
w januarys.co.uk

Our ref: CWB/MCS/
Your ref:

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Dear Melissa

REDWINGS DEVELOPMENT, NEWMARKET ROAD, CAMBRIDGE (IN THE PARISH OF TEVERSHAM) UPDATED REQUEST FOR A FURTHER FORMAL DEED OF VARIATION TO THE SECTION 106 AGREEMENT

I refer to our recent e-mail exchange and write further to the Section 106 Agreement for the above site dated 29th November 2005, and as later amended by a formal Deed of Variation dated 9th March 2009.

The matter in hand concerns the Affordable Housing provisions to the Agreement, as you are aware.

The Second Schedule to the original Section 106 Agreement deals with the matter of Affordable Housing. It stipulates that no free market dwelling should be occupied until such time as the Owners of the site have entered into an agreement with a Registered Social Landlord in respect of an "Affordable Housing Scheme" as agreed with the Council in writing and in respect of the sale of the requisite number of dwellings, on a shared ownership basis. The requisite number of dwellings was set at 7 (see definition 5b) unless otherwise agreed by the Council.

The Deed of Variation subsequently included a proviso that occupation of the free market dwellings "*shall not include any occupation by a tenant on an assured shorthold tenancy granted for a term not exceeding 12 months and to expire no later than 30 June 2010*".

The reason for the Deed of Variation was because our clients, Gibson Developments Limited, had not been able to dispose of the Affordable Housing units to a Registered Social Landlord, in spite of several failed attempts to so do.

I attach in this regard a copy of an internal file note which illustrates the chain of events from May / June 2007 to July 2009. Clearly this has all been a very time consuming and indeed a very painful process for our clients, who I believe it will be seen from the file note have been unflinchingly willing to accept economically unattractive and reducing offers for the affordable accommodation which has been constructed and which lies vacant and available for occupation / use.

It seems clear in this regard that the difficulty that has arisen has resulted from funding uncertainties in the Affordable Housing sector, and the general economic downturn whereby it has been very

difficult for prospective shared ownership occupiers to gain mortgage finance. This in turn has put many of the RSL's off pursuing the purchase schemes for what are exclusively shared ownership units.

In light of these factors, my colleague Nick Muncey e-mailed Melissa Reynolds and Schuyler Newstead on 4th August 2009, with a specific request that until such time as the position described above recovers, our clients would wish to see a further variation to the Section 106 Agreement so that for a period of time (we initially proposed 12 months as per the first Deed of Variation) the Affordable Housing units might be let on the open market on an Assured Shorthold Tenancy basis. Clearly throughout this period, our clients would seek to place the Affordable Housing units on the basis of an acceptable figure with a Registered Social Landlord, having regard to the overall viability of the project and bearing in mind that the project is now constructed and is facing a very substantial loss as things stand.

As an alternative, Nick Muncey did suggest the possibility of a commuted sum in lieu of on-site provision; however this was rejected in principle by Melissa Reynolds as the overall scheme (for 18 units) is not small scale (policy refers to schemes of 10 units or fewer as qualifying for possible commuted sums).

Since the request for this further variation was made in August 2009, there has been much chasing by us of the Council to try and get this matter agreed, but unfortunately the matter has not yet been reported to the Council's Planning Committee, as we understand is necessary. We do not readily understand why there has been such a delay. The file note attached includes a further sequence of events from the beginning of August until the middle of November which illustrates our attempts to conclude this initial request for a further variation.

We do therefore wish to signal by way of this perhaps more formal request that we are greatly concerned by the lack of progress on this matter, and we would therefore wish to have an urgent meeting followed by the establishment of a clear timetable for progressing our clients' (we believe entirely reasonable) request.

In so doing, however, and having now analysed the Section 106 Agreement further, we would wish to extend our request such that in addition to permitting the Affordable Housing units to be let on Assured Shorthold tenancies for a period which we would now on reflection propose should run until 30th June 2011, our clients should also be permitted to now completely detach the occupation of the "free market" dwellings from the occupation of the affordable units.

Our clients purchased the site with planning permission, with a view to developing the site out, and then with a view to selling the free market units at the earliest occasion. This they have not been able to do due to the way the Section 106 Agreement operates whereby the occupation of the free market units is tied to the occupation of the affordable housing units. To some extent the first variation to the Section 106 Agreement has helped in that at least those units have been able to be let on assured shortholds for a finite period, however, this is still not entirely satisfactory for two main reasons: -

1. The period is finite and expires at the end of June 2010, effectively meaning that new Assured Shorthold Tenancies cannot be entered into after 31st December 2009 bearing in mind these have a duration of not less than 6 months; and
2. On a more serious note for the project generally, and for our clients' further development programme, our clients have too much capital tied up in this project, including bank finance, which is penalising the overall success of the project whilst delaying delivery of further much needed housing elsewhere in the Sub-region.

In light of this, we would now formally add to the previous request, such that our clients should be free to dispose of the free market dwellings without the limitations imposed by the existing Section 106 Agreement.

We are aware that it is not at all uncommon to permit 50% of the free market units to be occupied ahead of the Affordable units being available for occupation, but in this case – and in light of the difficulties encountered and since the affordable units have already been built and fitted out – we would ask that this apply to all 12 free market units (i.e. 100% of them).

I would be grateful if you could establish a time when our clients and I could come and meet with you, Melissa Reynolds and Schuyler Newstead to progress this. I have already discussed the matter with Schuyler, who I believe is entirely sympathetic to our clients' predicament.

Yours sincerely



Colin Brown BA (Hons) MRTPI
Director

c.c. Jim Griffiths – Gibson Developments
Ben Ratcliffe – Gibson Development
Simon Dazeley – Januarys
Desmond Hirsch - Januarys