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Town Legal

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Your Ref: HUD001/0001

Our Ref: AB / 001523

22 April 2020

Dear Sirs

Our Client: North Norfolk District Council
Your Client: Huddies Ltd

This letter addresses the contents of your client's objection dated 18 February 2020 to the North Norfolk District Council (No 1, 1 High Street, Sheringham, NR26 8JP) Compulsory Purchase Order 2020 ("the Order"), plus your further letter dated 13 March 2020 and direct emails from your client dated 26 February 2020 and 6 March 2020.

The Order relates to the property informally known as the Shannocks Hotel in Sheringham, North Norfolk ("the Shannocks"). There is a significant enforcement history in relation to this empty and prominent property, which has culminated in the making of the Order. The Council has sought for many years to encourage the improvement and/or redevelopment of this property in its current ownership. Nevertheless, the position remains that no redevelopment has commenced.

You will be aware that the Council's long standing position has been that it would only progress with a compulsory purchase where your client was failing to redevelop. The Council's view is that your client has failed to redevelop. This is manifestly evident from the position on the ground. Your client has long sought to place blame elsewhere other than itself for its lack of progress, relying on excuses ranging from the weather to accusations against the Council of deliberate obstruction. Your client has had planning permission in place since 25 October 2017; this will soon be expiring. We have absolutely no doubts that the appointed Inspector will find that the reason your client has not commenced redevelopment as yet is because of your client.

For present purposes, we shall set out a summarised chronology of the contact with your client with regards to the operational progress of its development, as from the granting of your client's planning permission under ref: PF/17/0192 ("the Permission"):

1. On 16 January 2018 a letter was sent to your client seeking a plan and timetable for how it intended to progress with redevelopment;
2. Your client responded on 22 January 2018 with a delivery programme, which set a commencement on site of October 2018 and completion in May 2019;
3. On 10 April 2018 a letter was sent to your client specifically requesting that they maintain open communication with the Council on its progress against its delivery programme, in view of the Council's position on compulsory purchase;
4. At or around this time the Council agreed to the release of its topological survey to your client to assist with its design works;

5. Following an enquiry from your client's agent in relation to the use of the Council's car park as a compound during its redevelopment, the Council confirmed on 3 May 2018 it has a standard licence template that should be straight forward to implement. The officer sought details from your client's agent so that heads of terms could be drawn up;
6. On 18 June 2018 there was cause to request that your client direct all of their updates and queries in relation to this matter through ourselves to enable a response from officers, rather than directing such updates and queries to Councillors who do not have operational executive responsibility for the day to day conduct of the matter;
7. On 22 June 2018 your client was once again requested to keep the Council up-to-date with progress against its delivery programme and welcomed any evidence your client could provide to this effect;
8. On 5 July 2018 your client provided an updated delivery programme which set commencement on site for January 2019 and completion of the development in January 2020;
9. On 3 August 2018 we invited commencement of discussions between the Council and your client around the section 80 Building Act 1984 demolition notice, in view of the particular complexities of the site. The request to keep the Council up-to-date with progress against the delivery programme was again restated;
10. On 6 August 2018 your client's agent confirmed development was expected to commence in the first week of 2019, if not earlier;
11. In August 2018 your client applied to vary the conditions attached to the Permission;
12. Draft heads of terms for the licence agreement were sent by the Council to your client's agent on 6 September 2018, following the provision of a works commencement date;
13. The terms of the licence to use the Council's car park were agreed for the period 02/01/19 – 21/03/19;
14. On 14 September 2018 your client once again restated that it was fully committed to developing in a timely fashion, as it had done many times beforehand;
15. On 18 October 2018 we were informed by your client that their tender was open for redevelopment as of 15 October 2018 and tender documents had been sent to prospective main contractors;
16. In October 2018 permission was granted to vary the conditions attached to the Permission;
17. On 2 November 2018 an environmental health officer met with your client's agent to discuss requirements for the section 80 demolition notice and put them in touch with contacts who could assist them further to avoid delays. Our client's officer was informed demolition works would commence mid-January 2019 with a 6-8 week works schedule;
18. On 23 November 2018 your client's agent confirmed a demolition contractor had been selected and an appointment was being confirmed;
19. On 14 December 2018 the Council chased your client's agent on finalising the licence agreement;
20. On 3 January 2019 the Council signed off on your client's Party Wall Notice;
21. After having heard nothing further from your client or its agent regarding demolition, in particularly with reference to the section 80 notice and a planning application to discharge conditions, the Council chased your client's agent for an update. On 8 March 2019 your client's agent responded to state your client was reviewing tenders and scheme as a whole;
22. No demolition occurred up to the end of March 2019, as the Council had been assured it would. The Council received no communication from your client explaining the reason for the delay or its plans for demolition moving forwards;
23. Around April 2019 the Council became aware your client intended to apply to vary the use of the first floor of the property. The application submitted was not validated;

24. On 14 May 2019 the Local Planning Authority wrote to your client's architects requesting further information in relation to the invalidated application made in April;
25. On 28 May 2019 the Council received an email from your client's agent stating as follows: '*Assuming that the validation issue can be resolved and permission is received, Huddies intends to demolish and undertake effective ground investigations after the tourist season in October and tender for its altered scheme with the benefit of accurate substructure information shortly thereafter*.' This explicitly makes clear that demolition after the close of the tourist season from October 2019 was dependent upon the granting of the sought planning permission;
26. On 20 June 2019 the Local Planning Authority chased a response from your client's architect to its previous request for information following your client's invalidated application in April 2019;
27. Your client was provided with notice and a copy of the report and certain exempt appendices on 30 October 2019 in advance of a Cabinet meeting on 4 November 2019 at which an update was being provided with recommendations that the Council should proceed with a compulsory purchase pursuant to its previous resolution to do so in October 2015;
28. On 3 November 2019 we received a 7 page letter from your client, but no representations to put before the Cabinet meeting the following day were provided;
29. A section 80 Building Act 1984 notice from your client's demolition contractor was received dated 5 November 2019;
30. In November 2019 the Council's Head of Planning contacted your client's architects reiterating the need to make an application to discharge the conditions precedent attached to the Permission;
31. On 17 December 2019 a section 81 Building Act 1984 notice was served by the Council in line with the 6 week statutory period. The Environmental Health team had not received a response to the supplementary questions asked of your client's contractor prior to serving the section 81 notice;
32. On 17 December 2019 the Council received an email from your client's agent confirming that the project seemed to have "*regained some impetus*" with your client. Queries were raised around the licence for the car park and confirmed a new Party Wall notice would be issued;
33. On 14 January 2020 an application to discharge planning conditions from your client was validated;
34. Upon the Council receiving your client's agent's letter dated 17 January 2020, we emailed your client's agent on 27 January 2020 to confirm the Council had no record of receiving the Party Wall Notice dated 17 December 2019;
35. On 25 February 2020, after having procured and appointed a surveyor, the Council was notified your client had withdrawn the Party Wall notice;
36. On 3 April 2020 your client's architect was sent a letter confirming your client's discharge application was refused and set out suggested ways forward to enable the discharge of the conditions.

Your client was irrefutably on notice of the Council's position that it would only pursue a compulsory purchase if there was no progress with development. This has been repeated over and over in correspondence and reports. It will be seen that the Council was led to believe that demolition would be occurring between January 2019 and March 2019. This did not occur and your client provided no explanation or update to us at all regarding why this did not happen. Indeed, the last correspondence we received directly from your client about its plans was dated 18 October 2018, and the next time we received any direct communication from them was in October 2019.

Your client is quick to lament the Council's decision not to seek an update from them before proceeding to Cabinet in November 2019, in circumstances where it had failed to provide any

direct update at all for a whole year about its development plans, despite the Council's previous numerous and repeated requests that it do so.

It will be noted that the last update the Council received prior to returning the matter to Cabinet on 4 November 2019 (aside from your client's letter dated 3 November 2019) was from your client's agent on 28 May 2019 confirming that demolition would occur after the close of the tourist season (this being 30 September) on condition that the planning application for the use of the first floor was approved. Accordingly, what was known to the Council at the end of the tourist season in 2019, was the following:

- The Local Planning Authority had not received a planning application from your client following its invalidated submission in April 2019. The Local Planning Authority had chased further information in this regard on 14 May and 20 June, and had received no response;

- No application to discharge the conditions precedent of the Permission had been received by the Local Planning Authority;

- No section 80 Building Act 1984 demolition notice had been received;

- No updated request to finalise the licence to use the Council's car park as a compound has been received; and

- The Council had received no update at all from your client or anyone instructed on its behalf since 28 May 2019 regarding its plans for redevelopment.

Accordingly, we have no doubt that any Inspector will agree that it was wholly reasonable for the Council to conclude that no redevelopment was happening at that stage or at any point in the near future.

The Council entirely refutes your client's accusation that it has frustrated its redevelopment of the Shannocks. Addressing your grounds to establish this, as set out in your letter of objection:

1. '*The Council has failed to progress the heads of terms for a licence to use the car park for construction.*'

   As will be seen from the chronology above, the Council's position has always been that your client can use its car park as a compound and there are already head of terms in existence that have been agreed between the parties. The Council has never changed its position in this regard. The only provisions that need updating are the commencement and end dates, along with confirmation of cost which is directly related to the dates of use. If your client had provided a works period, then the licence could have been concluded. Your assertion also ignores the somewhat obvious point that if the Council was trying to frustrate your client's development, then it would not be permitting the use of its car park at all.

2. '*The Council also insisted in appointing its own surveyor under the Party Wall Act rather than agreeing a joint appointment'*

   The Council finds it entirely nonsensical that your client attempts to construe the Council's decision to follow a statutory procedure as evidence that it is frustrating its development. The Council may have agreed the Party Wall Notice in January 2019, however, a year on and under a new administration, it was determined that

there was not the requisite internal expertise available to make a contemporaneous decision on the impact of your client's development on the sea wall structures. Coastal erosion is of hugely significant importance to the Council, which has 45 miles of coastline, and has recently invested millions of pounds into coastal defences. The Council therefore sought to appoint its own surveyor given the fundamental importance of the sea wall structure as an asset of the Council. Instructing its own expert does not translate to evidence of obstruction; indeed the Council very much hopes that the sea wall will not be at risk from development at the Shannocks. Instructing its own expert is a decision routinely implemented by the Council across the board, in order that it has sole rights to the work produced by its contractors and also to ensure compliance with procurement rules. To suggest that there is anything sinister in the Council's approach in this regard is subterfuge.

Since your letter, your client has since decided to withdraw its Party Wall notice based on logic that eludes us. Your client sets out in emails that it will not serve another notice until the Council enters an agreement with it to act reasonably in facilitating its development (which is dealt with further below), yet states it will still serve another notice anyway even if this is not achieved. Consequently, your client has withdrawn a notice which was being dealt with by agents of both parties, only to re-serve another no matter what happens in the meantime. The agents could have had party wall matters resolved by now if it were not for the withdrawal, which leads the Council to question whether this was nothing more than a delay tactic by your client.

3. *'The Council has acted so as to frustrate and delay changes to the planning permission by encouraging an application under section 73 of the 1990 Act and then refusing to validate it'*

   We are unaware of who provided the contradictory advice that your client claims it was given, and the Council regrets if this is the case. It is a routine occurrence that applicants or their representatives will give a summary of their query upon which provisional advice is given, and only when full details are provided does it become clear that a different approach is required. Again, there is nothing sinister about this. Your client made the application in question in April 2019 which was invalidated. The Local Planning Authority then chased your client's representative on 14 May 2019 and 20 June 2019 for further information to assist with the application proceeding. There was no response. We note that your client does not question the accuracy of the Local Planning Authority's final position on its application. Your client has since taken the position that it will proceed with its current permission and apply to change thereafter. We therefore fail to see how this translates to the Council actively frustrating and delaying changes to your client's permission. If your client wishes to make a planning application, then it can do so, but this needs to be valid.

4. '*The Council have failed to respond to the validated application by Huddies discharge pre-commencement conditions despite numerous attempts by Huddies' architects to contact the Council*.'

   Your client's application was validated on 14 January 2020. Your letter was dated 18 February 2020. As you will be well aware, there is an 8 week statutory timeframe for responding to such applications. We therefore find it misleading to imply that a failure to respond to the validated application 4 weeks into the statutory timeframe translates to evidence that the Council is attempting to frustrate your client's

redevelopment. Indeed, as is stated above, the Council's Head of Planning personally called your client's architects in November 2019 to discuss what should be forthcoming within their application to discharge conditions, and yet an application still was not received until January 2020.

5. '*The Council gave Huddies only two working days' notice of the Council meeting to resolve to make the CPO. It is further understood that the resolution should have been considered a key decision and advertised 28 days in advance in accordance with the Council's constitution…. The inadequate notice given by the Council prevented meaningful representations which Huddies would otherwise have made to elected members*.'

   Firstly, the notice given to your client of a Cabinet meeting is not evidence of the Council frustrating your client's redevelopment. Secondly, as already confirmed to your client, the key decision was taken in October 2015 to pursue compulsory purchase. The return of the matter to Cabinet in November 2019 did not require any authority over and above what had already been decided by the Council.

   The Council said that it would provide notice to your client of the matter returning to Cabinet, which it duly did. In addition, it provided copies of exempt appendices that were not available on the Council's website. Officer's reports to Cabinet are not a collaborative process with the individual, company or other body to whom they relate. Additionally, there is no right for members of the public to speak at Cabinet meetings on items on the agenda that concern them, or make written representations in this regard. The Council has previously circulated representations your client has made on a Cabinet report to Cabinet Members, as it had no objections with doing so and it was willing to provide comfort to your client that Members were appraised of its account.

   The Cabinet meeting in question was held on 4 November 2019. On 3 November 2019 we received a seven page letter from your client. We therefore do not consider your client was prevented from making meaningful representations which could have been circulated, as it could have used its time and effort corresponding with us, which was not time sensitive, towards preparing representations for Cabinet. Your client made no request that the letter to us be circulated to Members, and to date we have not received any representations that your client wishes to be considered by Members emanating from the Cabinet report in question. In particular, your client was asked on 10 January 2020 if there was any further information or updates it wished us to relay to the Council before the Order was made. A response to this request was not received.

We note that in addition to the baseless grounds set out above to support your purported assertion that the Council is frustrating your client's development, you also make a direct and inflammatory accusation against the Council in your letter dated 18 February 2020 that it ignored the Party Wall Notice dated 17 December 2019. Please provide by return the evidence you rely on to support this accusation.

Turning to what is perhaps the most perplexing part of yours and your client's correspondence: the invitation for the Council to enter an agreement for your client to provide comfort to the Council in return for the Council acting reasonably to facilitate your client's development. The Council is not your client's development partner. The Council does not have a function of facilitator of private developments. Your client does not need the Council's agreement to carry out its development. What it does need to do is act as any other prudent developer would, and comply with regulatory and statutory requirements to bring about its own development.

Your client's request for an agreement sets out no basis on which your client should be given such preferential treatment by a public body, and nor does it set out any evidence that it has been specifically targeted to be treated differently from how any other applicant, developer, etc would be treated by the Council. The Council is not trying to frustrate your client's redevelopment, but equally not every officer of the Council sits at their desk waiting to prioritise above all else the communication, applications, etc received from your client or their representatives. As was alluded to in the Local Planning Authority's letter dated 3 April 2020, as a team they have resource issues. This does not just impact your client, but every other user of that service. In December 2019 there was a General Election which places an enormous resource strain on the Council. Council departments have work streams and ongoing caseloads which all demand attention, and in no way means individual officers or the Council as a whole has an agenda to thwart particular developments.

To clarify, under no circumstances will the Council be fettering its regulatory and statutory roles by reaching an agreement with your client to facilitate its development. Your client would be better placed concentrating its efforts on actually carrying out development, rather than trying to enter legally unenforceable agreements to give the local Council 'comfort'.

The Council's position remains precisely the same as it always has been. It wishes to see your client develop the Shannocks, but in the absence of this it will pursue the powers available to it, to bring about development itself. The report to the Cabinet of 4 November 2019 makes clear that if your client is progressing with development, then there would be no basis to implement the Order, or even pursue the Order where the circumstances justify this. It is therefore entirely within your client's gift to progress their development, subject of course to complying with the same regulatory and statutory stipulations that apply to every other developer. No separate agreement is required to enable your client to achieve this. Any application or request that is made of the Council by your client will be dealt with on its own merits by the relevant Council department, in the same way that every other service user is treated.

Your client has long espoused its intentions to develop the Shannocks 'in a timely fashion'. It is approaching 5 years since the Council resolved to pursue compulsory purchase in the absence of a voluntary sale. It is approaching 3 years since your client obtained the Permission for its development. And the position remains that no development whatsoever has commenced on site. The Council considers that if your client was as committed to redeveloping in a timely fashion as it claims, it would have commenced demolition in January 2019, as per its own delivery programme. Failing this, it would have put its house in order to have all elements in place for commencing demolition in October 2019 by making planning applications, submitting Building Act notices and making site arrangements through the summer of 2019. Instead, your client appears to have acted entirely reactively to the Council's continued enforcement steps, and fails to instil any substantive confidence that redevelopment is happening.

Notwithstanding all of the above, we are where we are. What would be useful is to hear from your client with details of its intentions moving forwards, with regards to satisfying planning conditions (advice has been provided by the Local Planning Authority in this regard), complying with the section 81 Building Act notice, and what its contractor's position is on commencing works during the current outbreak. The estates team is waiting to hear from you with details to enable a licence to be finalised and with a fresh Party Wall Notice. As has always been the case, if the Council is aware of what progress is being made by your client to redevelop, then this will be taken into account with regards to the decisions of the Council.

In relation to sale negotiations, we confirm that the Council's previous offer of £405,000.00 plus any associated CPO compensation heads of loss remains open for acceptance, subject to contract. Please confirm your client's position on the value of the Shannocks.

Historically, we consider the difference on value of the Shannocks stems from the Council's calculations taking into account the cost of acquisition, which of course your client does not have to factor in. Can you confirm if there are any other areas of dispute on the assessment of value between the parties, in order that the issues may be narrowed.

We look forward to hearing from you in this regard.

Yours faithfully

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