

Susan Davies

From: Matthew Phillips
Sent: 07 March 2014 13:08
To: planning_admin
Subject: FW: Section 106 Agreement - Land at Croesnewydd Road, Wrexham - Your Ref: FID1586925
Attachments: JRCM note 060314.docx
Importance: High

[applicant agent correspondence for the above.](#)

From: Jayne Martin [mailto:jaynemartin@bridgemere-group.co.uk] **On Behalf Of** Vincent Fairclough
Sent: 07 March 2014 12:52
To: tomos.phillips@geldards.com
Cc: Charles Felgate; Matthew Phillips; Jennie Daly; Jonathan Masters; Tim Booth; Matt Gilbert (mcgilbert@btconnect.com)
Subject: Section 106 Agreement - Land at Croesnewydd Road, Wrexham - Your Ref: FID1586925
Importance: High

Dear Tomos

I thank you for your email of the 6th February 2014 on which I have taken my client's instructions.

I attach a note from Jonathan Masters, my client's Commercial Director, commenting on the Council's proposals. Jonathan Masters is the representative of my client who had the discussions with Dr Golland on viability issues.

I add my own comments as follows:-

1. My clients do not accept Dr Golland's base land value of £1,014,000 (the Alternative Use Value (AUV)) for the purpose of calculating any commuted sum.
2. In his original viability appraisal, Dr Golland used theoretical build costs, rather than actual build costs. The commentary on the "Appraisal methodology" in the Council's document says that an open book approach will be used to determine actual build costs. Please confirm that this means that build costs will be ascertained by actual costs for construction on this site and that the actual build costs will include all costs and expenses incurred in the development, including all site overheads and all preliminary costs such as planning and design fees.

Actual Total Build Costs should also include an appropriate sum representing the current open market value of the site for the base land cost (not Dr Golland's £1,014,000).

3. Please confirm that the Appraisal methodology with regard to sales prices will be on the basis of actual net sale prices achieved ie. after all discounts and allowances.
4. Please confirm that the Appraisal methodology will include a calculation for interest on all costs.
5. The formula set out in the Council's proposals should allow an appropriate percentage for developer's profit. In his initial viability appraisal, Dr Golland allowed 17% developer's profit on open market dwellings and 5% developer's profit on affordable dwellings. This equated to approximately £2.25m developer's profit.

Any commuted sum payment to the Council must be on the basis of any increase in profit over and above the profit budgeted for in the original viability appraisal, given the acknowledgement by the Council that the site is not currently viable.

Thus the Council's formula for determining the margin on which to assess any additional commuted sum is wrong. It should be:-

ARV – (developer's profit in the viability appraisal, say £2.25m).

The Alternative Use Value (AUV) of £1,014,000 is not an appropriate base from which to ascertain any increase in profits.

6. I note that the Council is requesting a commuted sum of 50% of any uplift in value. This is the first time any indication has been given by the Council as to what percentage of uplift it is seeking. My client requires some justification for this 50% figure. On the basis that the normal requirement is for 25% affordable housing, then the percentage commuted sum payable to the Council should be 25% and not 50%.

Also please give some indication of what the Council proposes to spend the commuted sum on (of course, it should be for the provision of affordable housing in the Wrexham area) and please confirm that the Council will agree to spending that commuted sum on the agreed purpose within 5 years of payment and, if not spent, to refund the commuted sum to my clients.

7. My client is unwilling to accept an interim appraisal given the small scale of this development. In the Council's letter of the 8th October 2013 it said that it was seeking an interim viability appraisal after 38 dwellings have been commenced and that no more dwellings should be commenced until the viability appraisal has been approved by the Council. On the basis that reaching any agreement with the Council on any aspect of this planning application has been problematic, I can see that extreme difficulties will be experienced in reaching agreement on any interim appraisal with the Council and, effectively, the development will be stopped. This is unacceptable. If there is to be a viability appraisal, then it should be on the basis of one viability appraisal when the development of the site is completed. Alternatively, if the Council is insistent on an interim viability appraisal, there should be no embargo on construction and sales proceeding pending agreement on the interim viability appraisal.
8. I am concerned that I have still not received a draft Section 106 Agreement despite the committee meeting being held on the 7th October 2013. Moreover, the Council could have produced its proposals for the framework for the Section 106 Agreement shortly after the committee meeting in October 2013. Instead, it has waited approximately five months before producing any meaningful proposals.
9. I would invite you to address the above comments on the Council's proposals. If the Council cannot address the comments/criticisms outlined above in an acceptable way, then will you please arrange for the application to be returned to the planning committee of the Council with a report to the effect that agreement cannot be reached on the terms of a Section 106 Agreement and will you please then invite the Council to refuse the application based on my client's offer of the provision of 4 (or 3 if the Council prefers) affordable dwellings.

Will you please also return to me the £6,000 costs which my client has paid on account for the production of the Section 106 Agreement less your firm's reasonable costs to date.

Regards.

Vincent Fairclough
Legal Director

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