

From: Angela Juszczuk <angelaj@roger-hannah.co.uk>
Subject: RE: WSCC Lyminster Bypas(North) Public Inquiry
Date: 9 August 2021 at 09:29:08 BST
To: Chris Banks <bankssolutionsuk@gmail.com>

Hello Chris

In advance of the Inquiry opening tomorrow, please find attached Heads of Terms which we have proposed to West Sussex County Council.

We consider these terms to be fair and reasonable, meeting the requirements of the Council whilst also giving the landowner comfort that their land will be handed back in the same condition it is taken, in a timely manner.

We are currently awaiting a response from the Council.

Kind regards

Angela

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Heads of Terms

Objection Withdrawal Agreement (the "Agreement")

Landowner	T&L Crawley No.2 LLP (company registration number OC345194) of New Derwent House, 69-73 Theobalds Road, London WC1X 8TA
Council	West Sussex County Council of County Hall, Chichester PO19 1RQ
Land	Plots 10a and 10b shown shaded [] on the plan annexed.
Permitted Use	<p>Subject always to the provisions of the Agreement, the Landowner shall permit the Council to use the Land for the following purposes only:</p> <ol style="list-style-type: none"> 1. [] 2. [] <p><i>[DWF: specific details of the proposed uses will be required for the legal agreement. What exactly does the "provision of working space" and "creation of a compound" actually entail? The specific uses must be known? Certain restrictions/specific obligations may be required in the agreement, but these will flow from the specified use and hence the need for certainty]</i></p>
Use Period	[] to [] <i>[DWF: The period of occupation cannot be open ended and the legal agreement must include a sensible end date. The Landowner acquired this land for valuable consideration and the effect of any agreement (particularly an open ended one) will effectively "sterilise" the land for commercial purposes with resultant financial implications for the Landowner]</i>
Compensation	[] <i>[DWF: Roger Hannah to pick up with the Council as appropriate]</i>
Schedule of Condition	<p>Before commencing the Permitted Use, the Council shall at its own cost:</p> <ol style="list-style-type: none"> 1. Prepare a schedule approved by the Landowner (such approval not to be unreasonably withheld or delayed) evidencing the state and condition of the Land following full compliance by Persimmon with the obligations contained in the Deed of Covenant dated 15 May 2019 made between (1) Persimmon Homes Limited (2) T & L Crawley No.2 LLP (3) Greencore Foods Limited (the "Deed of Covenant"). 2. Procure the appointment of a consultant or consultants to be engaged by the Council (the "Consultant(s)") to provide the schedule of condition referred to above and the report referred to below (see "Reinstatement"), such Consultant(s), and the form of their professional appointment, to first be approved by the Landowner (acting reasonably, but subject always to the provisions of paragraph 3 below). 3. It shall be a condition of the appointment(s) that the relevant Consultant is required to maintain professional indemnity insurance

	<p>covering its liabilities in respect of the report for an amount of at least £10m in the annual aggregate. The form of appointment shall allow for the benefit of the report to be assigned without the relevant Consultant's consent and for the provision of reliance letters to be issued by the Consultant(s) in favour of future purchasers, lenders and tenants of the Land in a form to be approved by the Landowner (such approval not to be unreasonably withheld or delayed) and appended to the form of appointment.</p> <p>The agreed form of schedule of condition and the report must cover (inter alia):</p> <ul style="list-style-type: none"> - Geotechnical ground/contamination conditions - Topographical level survey/condition - Services inspection/condition - General site condition.
<p>Council's obligations</p>	<p>The Agreement to include obligations on the part of the Council as reasonably required by the Landowner relating to the Council's use and with a view at all times to protecting the Land and the Landowner's ability to immediately develop the same following expiry of the Use Period, to include (inter alia):</p> <ol style="list-style-type: none"> 1. Not to use the Land for any purposes other than the Permitted Use. 2. Not to use or cause damage to any service media within or forming part of the Land or any adjoining land and to take all necessary precautions to protect the same from damage. 3. Not to make any alteration or addition whatsoever to the Land and to keep the Land clean and tidy and clear of rubbish at all times. 4. To keep the Land secure in order to prevent entry upon the Land or any adjoining land by any third party (other than those with the authority of the Council and/or its contractors). 5. To maintain public liability insurance in relation to the use of the Land and not to do anything which may vitiate (whether in whole or part) any insurance in respect of the Land or adjoining land. 6. To comply with all statutory and other legal requirements in relation to the Land. 7. To procure that all those entering the Land comply with the terms of the Agreement. 8. To ensure that all vehicular access and egress to and from the Land is restricted to such route as may be agreed with the Landowner from time to time. 9. Not to cause or permit to be caused any damage (including contamination) to the Land, utilities/services or any adjoining land. 10. Not to take onto the Land, store or allow the escape of any polluting or contaminating substances of any kind (including motor fuel, lubricating

	<p>oil or batteries) except where properly and safely stored within the fuel tank, engine and/or battery components of any vehicle using the Land.</p> <p>11. Make good any damage caused to the Land and any adjoining land, to undertake any necessary remediation and to return the Land in the required condition (see "Reinstatement" below) to the Landowner's reasonable satisfaction.</p> <p>12. To indemnify the Landowner against all losses, claims, demands, actions, proceedings, damages, costs, expenses and all other liabilities whatsoever incurred in any way arising from the Agreement, the Permitted Use and/or any breach of the Agreement.</p>
Reinstatement	<p>On expiry of the Use Period:</p> <p>1. Return the Land to the Landowner in accordance with the condition shown in the Schedule of Condition, properly levelled, remediated clear of all and any contamination, left clean and tidy with all plant, machinery and equipment removed and all damage to the Land and any adjoining land made good to the Landowner's reasonable satisfaction and (without prejudice to the generality of the foregoing) in the state and condition required by the Deed of Covenant (in particular clause 3 and paragraphs 7 and 8 of the Schedule to the same).</p> <p>2. To provide a report from the Consultant(s) confirming that the Land has been returned to the Landowner in accordance with paragraph 1 above and, in particular, containing an unqualified opinion that the Land is free of any contamination or other ground conditions so as to be suitable for immediate residential development.</p>
Bond	<p>The Council will procure a bond in the sum of £[] from [] on such terms as are approved by the Landowner (acting reasonably) in order to secure the performance of the Council's obligations contained in the Agreement. <i>[DWF: Security will be required for the reinstatement obligations. Reliance on indemnities in the current climate is not sufficient. In addition, the Landowner wouldn't want to have to claim under indemnities, as even that would incur further costs. It needs a bond to hand it can call upon immediately in the event that the Council's obligations are not complied with. Please note that the Landowner paid a premium for a 'gold standard' remediated site on acquisition and this must therefore be reflected in the terms (and spirit) of the legal agreement. The Council will be handed a fully remediated site in accordance with the obligations in the Deed of Covenant and there cannot be any risk to the Landowner of it being returned by the Council (or it's contractor) in any other such condition]</i></p>
Other	<p>The Council shall agree and acknowledge that the terms of the Agreement shall be subject to terms of the Deed of Covenant and that the Council shall not prohibit Persimmon Homes Limited from undertaking the obligations on its part (whether in relation to the Land or otherwise) contained in the Deed of Covenant.</p>
Landowner's Solicitors	<p>DWF Law LLP 20 Fenchurch Street</p>

	London EC3M 3AG James Froud/Michelle Spark
Council's Solicitors	West Sussex County Council County Hall Chichester PO19 1RQ Tanneth Melhuish/Gail Rowley
Timing	ASAP
Costs	The Council shall meet the reasonable and proper professional costs incurred by the Landowner in respect of the negotiation and completion of the Agreement.

We confirm our agreement to the above heads of terms.

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For and on behalf of the Landowner

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For and on behalf of the Council