

# THRINGS

For the attention of Marcus Goldsworthy,  
Development Control Services  
Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
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Also via email: [mjgoldsworthy@valeofglamorgan.gov.uk](mailto:mjgoldsworthy@valeofglamorgan.gov.uk)

16 October 2015

Your Reference:  
Our Reference: AM/lcl/H7549-1

Direct Line: 0117 9309575  
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Dear Sirs

**Our Client: Mr Peter Hayman of Lettons House, Lettons Way, Dinas Powys, Vale of Glamorgan CF64 4BY ("the Property")**

**Application Reference: 2014/01033/FUL**

We write further to our meeting on Friday 18 September 2015 and thought it would be useful to set the points we discussed and the agreed next steps. We have numbered the following paragraphs for ease of future reference:

1. We confirmed that we were in receipt of Counsel's advice that concluded that there was no clear basis for the proposed planning obligation in the instant case and that it failed to satisfy the provisions of Regulation 122 of the Community Infrastructure Regulations 2010 ("the 2010 Regulations");
2. We further confirmed that Counsel had advised that the request for a planning obligation in the sum of £145,065 is not supported by local policy or national guidance on the issue;
3. You confirmed that you had taken your own legal advice from the Council's solicitor (who has since left the organisation) and your view remains that your request is entirely lawful and that you are entitled to compensation if the provision of affordable housing is lost;
4. You refused to review our advice from Counsel and questioned his credentials notwithstanding Tim Sheppard (Year of Call 1995) practises out of No5 Chambers which is widely acknowledged by professionals working in the industry as well as the legal press as being one of the leading sets of Planning and Environment Barristers in the country;
5. You advised that in accordance with the Welsh Government's Acceptable Cost Guidance/On Costs for use with Social Housing Grant Funded Housing in Wales (April 2015) the above figure had risen to approximately £157,000 (we understand based on 58% of the Band 5 ACG for a 7p4b house plus an additional 10% to cover fees for land acquisition, planning and other costs);

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6. You also confirmed that the above figure was non-negotiable notwithstanding the fact that we made no proposal to negotiate the same;
7. You also confirmed that there is a demand for affordable housing for the size of the Property and on that basis it would be difficult for the Council to agree to the loss of the provision for affordable housing the Property offers by virtue of the enterprise condition;
8. You advised that in order to progress the application we should speak with Pam Toms in order to get an up to date position on the demand for affordable housing in Dinas Powys since the information we have provided hitherto predates our Application;
9. You agreed that TAN6 makes no provision for the payment of compensation where an enterprise condition is removed and opined that the Appeal Decision (ref: 2220344) relating to the property known as Derwen Fach (where an enterprise condition was removed without the need for a planning obligation) was distinguishable since in that case the property was not in a sustainable location notwithstanding the fact that the Inspector concluded in that case, amongst other things, that it would not be a suitable property to be regarded as an affordable dwelling to purchase or rent given its size and its resulting value "*allied to its isolated position*";
10. You also stated that in your view the current situation is that there is a demand for affordable housing in the locality but that if Pam Toms confirms that there is no demand for the Property that will be, in your view, a material consideration in the determination of the Application and it will then be open to the officer to recommend to Committee (i) the approval of the application with a full monetary contribution (as aforementioned); (ii) the approval of the application with a reduced contribution or (iii) to refuse the application;
11. You also mentioned at the meeting that it was, in effect, a matter of discussion between the Council and our client as to whether United Welsh Housing Association (UWHA) had withdrawn their offer or whether our client had refused the same. With respect, the chronology of events surrounding UWHA's interest cannot, on any view, continue to be a matter of discussion between the parties such that it could again, as was previously the case, be misrepresented in any officer's report to committee. To this end, we set out the position below as previously indicated in our letter of 10 July 2015 as follows:
  - (a) Prior to the interest now shown by Newydd Housing following our meeting, UWHA were the only Housing Association to respond to our clients' awareness letters that were sent to all HAs in the locality. As you know, UWHA only showed an interest after our clients' initial application had been submitted and not in response to our clients' letter.
  - (b) UWHA have openly admitted that they had been asked by the Council to show an interest and see if they could use the property for one of their schemes. They were not looking at any other site in the locality, they were asked by the Council to specifically look at our property; this was stated by Helen Galsworthy (UWHA) during a meeting at Harmers offices where our client was present.

- (c) Particulars of the property were initially circulated on 17 December 2012 to the four main Housing Associations in the area; Wales and West confirmed via email on 22 January 2013 that they were not interested in the Property. This email was the only email received from any of the Housing associations.
- (d) Of particular interest is the lack of response from UHWA, although they did express interest direct to the selling agent at a later date. On the back of this interest, planning application 2012/01193/FUL was refused on 12 April 2013.
- (e) UWHA made an offer in 2013 which they eventually retracted on 30th October 2013 (by email to Watts Morgan) and was not refused in any way by our client.
- (f) UWHA came to view the Property again in early 2014 which coincided with the date of our client's next application following the previous refusal. This was for a different scheme to the one they had tried previously;
- (g) UWHA eventually conceded (email of 6 June 2014 refers) that their client was not interested and they (UWHA) had no further interest in the Property; and
- (h) It follows, and for the avoidance of any doubt, that there was never any negotiation over price and to suggest otherwise is a falsehood. UWHA made an offer and withdrew it after speaking to their funding providers. They did not come back with a lower offer or negotiate in any way but simply withdrew their speculative interest. We respectfully request that this factual account is accurately recorded in any officer's report to committee at the appropriate time.

In summary, we remain of the view that the Council's stance is unreasonable since it has no foundation in local or national policy and fails to satisfy the statutory test set out in Regulation 122 of the 2010 Regulations.

We take this opportunity to invite you to review your position and look forward to hearing from you soonest.

Yours faithfully

  
Thrings LLP

cc: Steven Rennie, VOG

P.S. Since dictating this letter, Pam Toms has confirmed, in her letter of 1 October 2015, that there is no need for a 5 bedroom house in Dinas Powys.

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**ADVICE**

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1. I am instructed by Thrings Solicitors to advise in writing in respect of an application for the removal of an occupancy condition imposed in relation to Lettons House, Lettons Way, CF46 4BY (the 'Property').

Background

2. The background to this matter is set out in full in my instructions and I thank those instructing me for the concise and detailed nature of those instructions. My instructions should be read in conjunction with this Advice, along with the statement made by the owner of the Property, Mr Peter Hayman (enclosed with my papers,) for the full background to this matter.
3. As that background is known to those instructing me, a short summary will suffice for present purposes.
4. Planning permission was granted for the Property in 1980, following an appeal to the Secretary of State. An agricultural occupancy condition was imposed as part of the grant of planning permission, as set out at paragraph 9 of the 1980 appeal decision (Condition 3; enclosure 3 of my instructions).
5. Attempts were made to sell the Property in 2011 but no buyer could be found who complied with the agricultural occupancy condition.
6. Thereafter an application was made in 2011, to change the agricultural occupancy condition for a new rural enterprise condition, which had been introduced pursuant to TAN 6. The application was granted and the new rural occupancy condition (the 'Condition') was substituted, which restricted occupancy to persons working in a rural enterprise, or their survivors, and if there were no such eligible occupiers, to persons eligible for affordable housing, or their survivors. The full terms of the condition should