



Our ref: AL/ar

1 March 2016

Mr P Mumford  
Team Leader, New Communities  
South Cambridgeshire Hall  
Cambourne Business Park  
Cambourne  
Cambridge CB23 6EA

Dear Paul

## WING VIABILITY ADVICE

Further to the latest advice provided by Simon Bird QC, we comment below on the issues Mr Bird has referred back to South Cambridgeshire District Council.

1. The betterment issue has been ruled out by Mr Bird, and the QC's acting for Marshalls. This is a point no longer worth pursuing. Mr Bird's advice is that the Area Action Plan policy on relocation costs is intended to provide Marshalls with the incentive to relocate, so as to allow the development to happen, and it is not relevant that Marshalls could benefit from new buildings in the place of older ones. So, in the context of viability and in this particular case the policy position is that Marshalls are entitled to make allowance for both the benchmark land value and the relocation costs before determining whether or not there is enough surplus value to allocate to S106 contributions/affordable housing.
2. Mr Bird suggests (para 14) that a 'clawback mechanism' which is intended to determine if a commuted sum could be paid later in the scheme due to an under-provision at the early stages, will not be practical. In the circumstances we agree (see para 4 below).
3. In any event, Marshalls have stated they would be willing to offer 30% affordable housing despite a £6m shortfall in land value. Whilst their appraisal is not specifically agreed by us, we acknowledge that on a development of this scale only small adjustment(s) would be necessary in a sensitivity analysis to demonstrate that such a shortfall is possible. In that case, the Council should be aware if there were a future review, this 'shortfall' would need to be recovered first before any potential commuted sum is payable, thus reducing the chances of such a payment being made.
4. Counsel suggests (para 15) that it would not be reasonable to require a full viability review mechanism over and above Marshall's initial appraisal. He asks whether there might be an alternative mechanism. The only alternative we are aware of would be the Council seeking to obtain a commuted sum for affordable housing from a share in the uplift in the gross sales revenues for the scheme. Such a simple mechanism is normally reserved for smaller, less complex schemes, and certainly not one that includes such extensive relocation costs and infrastructure issues. In the circumstances, we consider it unlikely that Marshalls would agree to such a mechanism as it will cause uncertainty.

5. As a commitment to early delivery, Marshalls have offered a review mechanism which would provide for a full re-run of the appraisal in the event that certain development time-scales are not met. This includes an obligation to ensure the infrastructure and substructure up to slab level for the first 50 dwellings are completed within 2 years of consent being granted. This should be coupled with a requirement not to occupy any dwellings until the review is settled.
6. With a lead-in period of 2 years it is important that such a viability review should consider costs and values appropriate for the future valuation date, but it is difficult to predict the outcome now. In any event, the risk of having to carry out such an exercise again is another encouragement for Marshalls to progress the development as soon as possible.
7. Counsel suggests (para 20) that it may be difficult to enforce this review in the event of the timescales not being met because this would fail the test of being a "negative covenant" and therefore may be un-enforceable. It may be possible to set it out in a 'negative' way (for example, if the developer fails to deliver the scheme to slab level on 50 units within 2 years then they cannot occupy any dwellings until the result of the review is known). However, it will be a matter for your legal team to advise on the specific wording and whether or not it could be enforced in this way.
8. With respect to the costs of the engine testing bay, Counsel asks whether there would be scope to seek a review of the viability once its relocation is complete. However, this would need to allow for a possible increase in costs as well as a possible decrease so it could work both ways and even end up with a reduction in affordable housing. Given that this is such a specialist matter, the Council should consider this based on the independent advice they have sought and whether (as an alternative) it would be of any benefit if prior approval from the Council was to be required.
9. Taking into account the further Counsel's advice together with the various matters raised in our previous reports, we conclude the offer submitted by Marshalls in their letter dated 26<sup>th</sup> November 2015 to be within an acceptable range of possible outcomes. Whilst it may be possible to seek further alterations to improve the overall deal, this could cause considerable further delays. If the Councils' priority is to secure an earlier delivery of the proposed development, then it may be in your interests to bring this matter to a close and settle on a review as set out at para 5 above.

I trust the above clarifies matters.

Yours Sincerely

**A M LEAHY BSc FRICS**

**M C HALLAM BSc FRICS**

For and on behalf of Bespoke Property Consultants and Carter Jonas

Arundene Orchard Loxwood Road Rudgwick West Sussex RH12 3BT

e [andy.leahy@bpqlimited.co.uk](mailto:andy.leahy@bpqlimited.co.uk) t 01403 823425 f 01403 824075 w [www.bpqlimited.co.uk](http://www.bpqlimited.co.uk)

Bespoke Properties Ltd Registered Office Barttelot Court Barttelot Road Horsham West Sussex RH12 1DQ Registered in England 321 8755 VAT Registered 679 8683 46