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5 December 2023

Dear Mr Hope

Cuerden Strategic Site, East of Stanifield Lane, North of Clayton Farm, West of Wigan Road, Lostock Hall - Planning Application LCC/2022/0044

Please bring this letter to the attention of all members of the Development Control Committee ahead of the meeting on 6 December at which the above application is currently due to be determined. You will recall that we act for Brookhouse Group Limited.

Use of Regulation 3 of the Town and Country Planning General Regulations 1992

It is stated in your committee report that in accordance with regulation 3 LCC “*must act as the determining authority given that it is the interested planning authority seeking to jointly develop land of the authority*”.

However, the report does not explain why it is considered that this is the case and what the relevant arrangements are, under which LCC and Maple Grove Developments may be said to be jointly fulfilling any developer role in relation to the site.

Furthermore, there is no reference to the ongoing litigation in the High Court under which our client is seeking a Declaration of Ineffectiveness in respect of the LCC contract with Maple Grove Developments on the basis that it was not procured and instead relied upon a contract entered into with the parent company of Maple Grove over 10 years ago which does not permit LCC to enter into the subsequent contract with Maple Grove. Brookhouse’s position is that the contract with Maple Grove is therefore an unlawful direct award and should be set aside by the court. LCC claims that the “*arrangement*” entered into with the parent company of Maple Grove enables it to enter into various subsequent contracts, including the one with Maple Grove, even though it was not a Framework Agreement. LCC’s position is that the agreement entered over 10 years ago is broad enough to allow the subsequent agreement to be entered into with Maple Grove, notwithstanding that it does not mention Cuerden, contains no scheme details, and at or around / after entering into this “*arrangement*” with the parent company of Maple Grove, LCC entered into contracts to develop its landholding at Cuerden with other developers.

LCC applied to strike out the claim but failed. Brookhouse applied to strike out a limitation defence and that application was successful. The relevant interim judgment is dated 17 November 2023.

Partners: Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore,
Raj Gupta, Meeta Kaur, Victoria McKeegan, Simon Ricketts, Patrick Robinson, Louise Samuel, Spencer Tewis-Allen

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Our client has every confidence that its claim will be successful and that the proposed development arrangement with Maple Grove Limited is legally ineffective. It would be premature to determine this application until that litigation has been concluded. Otherwise, the committee's decision will have been made either in error or in circumstances where the reasonable observer would conclude that the committee had been improperly influenced by LCC's corporate objectives for the site, by virtue of its position as landowner in relation to this commercial development opportunity.

Non-compliance with South Ribble local plan policy 4

We can only conclude that similarly it is LCC's position as landowner which has caused officers to resist our repeated requests that our client be protected against the prospect of ransom against it by LCC or subsequent owners of the application site.

The need for an anti-ransom provision by way of, for example, simple section 106 planning obligation, is clear. The situation is indeed equivalent to that which the Supreme Court recently described as "*wholly justified*" (in *DB Symmetry Limited v Swindon Borough Council* [2022] UKSC 33). We have provided you with a number of examples from across the country.

We have never received any reasoned response as to why this simple protection is being resisted, the consequence being that the application is plainly in breach of policy C4, which repeatedly stresses the need for "*comprehensive*" / "*integrated and comprehensive development*".

The report to committee simply asserts that "*the design of the proposal still maintains the opportunity to link through to the wider site at a later date*" (page 44). This completely misses the point.

If the opportunity to extract a land premium (ransom) in return for allowing access is left open, it will be taken. The consequence of taking it will be either to prevent or delay development of Brookhouse's land or to negatively affect its viability so that its application (which will be for South Ribble Borough Council to determine) will not be able to provide the public benefits that the council would otherwise require. By deliberately not closing the door on the potential for ransom, LCC would be granting planning permission for a proposal which would drive a coach and horses through the fundamental requirement of policy C4 – and a significant element of its justification for release from the green belt in first place – comprehensive development which can maximise the economic (and place-making) benefits arising from its development.

Our client's concerns as to this matter are of course shared by South Ribble Borough Council, the "*usual*" local planning authority in relation to the allocation and therefore its continuing objection to the application on this basis should be given great weight in LCC's decision making.

In conclusion

This is an application which requires sensitive handling due to LCC's position as local planning authority, land owner and (apparently) developer.

We ask Development Management Committee to defer determination of this application until the current litigation has concluded as to the status of development arrangements as between LCC and Maple Grove Developments.

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In any event we ask that LCC re-considers its present unreasoned stance to restrict the potential for ransom of our client's land, a stance which is contrary to policy C4 and indeed contrary to South Ribble Borough Council's objections.

Yours faithfully

Town Legal LLP

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