

***BY EMAIL***

Waverley Borough Council  
The Burys  
Godalming  
Surrey  
GU7 1HR

Our ref : MCC/RHW/W1830-11/MCC  
Doc Ref : 2153741300  
Date : 5 October 2022  
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Dear Sirs,

**Advice: Enfranchisement, Wyatts Close, Godalming GU7**

We write further to this matter to report to you on the terms of the Settlement Agreement dated 28<sup>th</sup> September 2022 ('the Settlement Agreement') made between National Corp Limited (1) and Waverley Borough Council (2) ('Waverley'/ 'the Council').

This agreement has been reached following the claims to purchase the freeholds to the houses to 1-32 Wyatts Close in accordance with the provisions of the Leasehold Reform Act 1967 ('the Leasehold Reform Act 1967').

**1. Background**

- 1.1 As will have previously been reported to you by your Investment Management Team, this process has involved the Council as long leaseholder serving notices under the Leasehold Reform Act 1967 to acquire the freeholds to these 32 houses (currently held on a 33-year lease) on a statutory basis. This was done out of a singular long lease held by the council and resulted in valid freehold claims being established to each of the 32 units.
- 1.2 The basis of valuation under the 1967 Act is favourable and accordingly as a result of this, you obtained a significant discount against the price that had previously been offered in respect of a voluntary discussion with the freeholder National Corp concerning the freehold to this site. We understand that the original price in discussion was in excess of £3 million.
- 1.3 As part of the statutory process it became necessary to apply to the First Tier Tribunal of the Property Chamber ('the Tribunal') as this is the correct forum for resolving disputes about the price to be paid on any acquisition.

- 1.4 In the run-up to a final hearing listed for 28th September 2022, your valuer, Mike Aldous of Perry Hill Chartered Surveyors negotiated a settlement in respect of the freehold land to the houses themselves *and* also negotiated to include the remainder of the site comprised in title number SY788504 belonging to National Corp. The remaining elements of this site being the roadway, verges and corner plots (which have the potential to be developed) were not the subject of a statutory claim, but by negotiation it was possible to include these as part of agreements struck up between the parties.
- 1.5 As the proposed settlement comprised both statutory and non-statutory elements it was necessary to bring these together under the terms of the Settlement Agreement. This is because the Tribunal can only order matters in respect of the statutory claims (i.e. the freehold to the houses themselves) and not the surrounding or additional land.
- 1.6 The matter progressed towards the hearing listed on 28th September 2022 and in the run-up to this final hearing, agreement was reached.
- 1.7 The cases have now been withdrawn from the Tribunal on the basis that matters are 'agreed' between the parties, albeit that the agreement itself contains conditional elements and the additional land and the terms that have been agreed are different in this regard from those that the Tribunal could order.
- 1.8 The Settlement Agreement is a contractual document entered into the parties which sets out concisely the terms that have been reached. This letter should be read in conjunction with the Settlement Agreement and have enclosed a copy of this for your ease of reference.
- 1.9 The purpose of this letter is to report to you on the terms of the Settlement Agreement that have been reached and to outline the Council's obligations arising under it.

## **2. The Settlement Agreement**

- 2.1 Under the terms of the Settlement Agreement, Waverley has six weeks from the date of the agreement to both exchange a contract for the purchase of the additional land (the value of this contract is £10,000) *and* to write in open correspondence confirming that statutory terms have been agreed for the remainder of the site (where the acquisition cost is £1,015,000).
- 2.2 The agreement requires that both of these steps are taken together and they cannot be dealt with independently.

- 2.3 Once these steps have been taken, a binding statutory contractual mechanism will come into force in relation to completion of the purchase of the freehold to the houses and to the additional land.

The following obligations will then arise: -

- 2.4 The deemed statutory completion date will be one week after the date on which the confirmation referred to above is given and from that date, if completion does not take place within that timeframe (one week) then the council will need to pay interest on the outstanding balance of the purchase price at a rate of 2% above Bank of England base rate until the time that actual completion takes place.
- 2.5 There is a longstop mechanism (imported from the 1967 Act) such that completion must take place within one month of the formal notification and exchange of contracts having been entered into.
- 2.6 There is a 'hard stop' such that if completion does not occur within this timeframe then the Council will have been deemed to have withdrawn from the transaction and will lose its deposit paid (if any). The deposit is likely to be in respect of the additional land only.
- 2.7 The deemed withdrawal of the claim would mean that you would not be able to bring a similar claim for a period of a year, and of course the non-statutory elements (the additional land) would not be available under this process, and would therefore need to be negotiated again on an arm's length basis assuming that National Corp would be prepared to sell them, which of course is an unknown and cannot be relied upon.
- 2.8 In addition, if you do not enter into the exchange of contracts (statutory and non-statutory) by 7 November 2022, then the agreement will come to an end and you will once again be deemed to have withdrawn from the transaction on a statutory basis and will be once again unable to bring a further claim for a period of a year.
- 2.9 In both cases, were the claims to be withdrawn you would become liable for the statutory costs of the freeholder (currently agreed at £51,812.42) and your own costs to date in this matter.
- 2.10 Your finance team will be able to advise in relation to the other costs that have been incurred, such as this firm's fees to date in the matter, the costs of counsel (Tamsin Cox of Falcon Chambers), your planning advisors and Perry Hill Chartered Surveyors.

You should therefore only proceed to the exchange of contracts phase of the Settlement

Agreement if you are similarly confident that you wish to proceed to completion.

### **3. The nature of the Settlement Agreement**

- 3.1 Were you not to complete, the one advantage of the Settlement Agreement mechanism that has been negotiated is that there would be very limited options for the freeholder to seek specific performance of the contract – i.e. to compel you to complete.
- 3.2 This does therefore provide a further ‘safety net’ in as much as the potential downside risk will be ‘contained’ in as much as it will related to the costs incurred, lost deposit and interest paid together with the opportunity cost of not being able to bring the transaction about for a further year and the risk that the additional land may never be available again.

### **Summary of Key Dates**

By way of an example, we have set out some dates which Waverley will need to work to if it is to proceed to completion successfully under this agreement.

- a. Exchange of both contracts (statutory and non-statutory) *must* take place by no later than **7th November 2022**.
- b. Following exchange of contracts, completion must take place within one month of this date. So, for instance, if contracts were exchanged on the last day possible of 7th November 2022, then completion would need to occur by **7th December 2022** in order to avoid withdrawal of the claims and other adverse circumstances described above.

### **4. Timelines and suggested actions for Waverley**

- 4.1 The above dates are the *absolute* end points and you should work to dates **earlier** than these to ensure compliance to avoid maximising risk and cost.
- 4.2 For legal reasons to do with the sellers’ own tax position, they will not be likely to want to agree to any completion mechanism outside of the statutory timetable, as this will affect their position in rollover relief. The above dates should therefore be seen as ‘fixed’ and final and incapable of extension by negotiation.
- 4.3 Our suggestion would be that you work towards the approvals necessary for exchange by no later than **7th November 2022** (preferably earlier) and immediately that such exchange is effected, be ready, willing and able to

complete – this will mean ensuring that the council has signed the necessary transfer and that we are approved to enter into the non-statutory contract and that funding is available to pay the full balance of the purchase price together with the stamp duty land tax and other possible disbursements in cleared funds in advance of any completion date. We would suggest that you plan for a completion date of **14<sup>th</sup> November 2022**.

- 4.4 We would propose sending the transfers for execution in escrow to your relevant legal and compliance departments so that these can be held by us in readiness to avoid any unnecessary delays. We would suggest that these are circulated for execution before any final cabinet approvals, etc. so as to avoid unnecessary delay and we would be happy to undertake to hold any executed documents strictly to your order with a view to destroying these in the in the event that the transaction does not proceed.

In terms of our future reporting, please confirm who we should be responding to in relation to these actions and the parties that should be copied into correspondence concerning this matter.

Should you have any further questions concerning the above advice please do not hesitate to contact us to discuss.

Yours faithfully



**BISHOP & SEWELL LLP**