

Jacob Gemma

From: CAMERON Ian [REDACTED]@bdb-law.co.uk>
Sent: 05 February 2016 17:17
To: 'Chris Oakley'
Cc: [REDACTED]@nabarro.com'; 'Bee Emmott'; 'Anthony Marley'; [REDACTED]@gardenbridge.london'; Richard de Cani (MD Planning); Brown Andy; CHALLIS Mark; PERRIN Bob; 'Emma Barnett [REDACTED]@adamshendry.co.uk)'; 'Adam Down'
Subject: Garden Bridge - response to Westminster's queries

Chris,

Below is the text of the email from Marc Franks to BDB of 22 January raising 5 specific queries. We have added our responses in blue which we hope will allow this matter to be progressed.

Kind regards

Ian

1. Our client is in principle happy to assist GBT. However, the Council will need complete coverage for any potential liabilities which it may incur as a result of providing such assistance and entering into the envisaged transactions. As I understand it, that will mean that a GLA or equivalent substantial guarantee will be required and caveats or limits to the indemnity provisions are not agreed. I appreciate that this is not in line with your intended approach but do not believe that lawyers alone can do anything to move this point forward. Our instructions on this are that the GLA, or equivalent, will not be providing any form of guarantee. We see the potential liabilities for the Council as covering two main areas: JR costs and compensation that may be payable by the Council following the exercise of s237. As far as JR costs are concerned, GBT would of course be happy to bear them provided that the scheme is intended to progress, but it cannot agree to pay the costs of defending any claim where there is no prospect of the Bridge proceeding and any defence is submitted purely for reputational reasons relating to the Council. In order to progress this, the Trust would be willing to reserve a fund of £250,000 to cover these potential JR-related liabilities which should be easily sufficient. We suggest that the simplest way to proceed would be for our client to pay this sum to BDB and we then provide a solicitor's undertaking to the Council. Please could you confirm your instructions.
In terms of the second limb, as you know, the professional advice that our client has received is that no compensation will be payable as there would be no diminution in value of any land interests. However, GBT will provide an indemnity in relation to any costs incurred following the exercise of s.237.
2. Officers have stressed to me that appropriation is an incredibly sensitive issue within the Council and as I mentioned when we met, the Council does very much see this as a solution of last resort. Can I stress again the importance of getting the updated report on efforts made to negotiate and the report on title – without those, we will not be able to make any progress on this issue. Previous examples of appropriation have involved council members requiring developers to go back and renegotiate with adjoining owners a number of times and on the basis of previous experience, any process of appropriation is likely to be a lengthy one. We should have the updated schedule of negotiations with you later today/Monday. That schedule will reference the approaches made to all affected, including those for example in Arundel Great Court (AGC) who bought off-plan. Despite the Trust having written to all 21 owners in that development on several occasions, no objections were received, indeed 3 returned signed consents. In total we have now have 7 signed consents from all those affected by the scheme. As you know this question of whether GBT has used best endeavours to obtain the consents of those with the benefit of the statutory restrictions will form part of our next set of instructions to Andrew Tait QC. Please can you confirm your agreement to the current draft of the instructions which was sent this morning so that we can issue these instructions

as soon as possible. As you know, even if one beneficiary withholds their consent, then sections 237 and 241 would still have to be operated and such exercise would cover all relevant restrictions and would not operate so as to exclude those who had consented. A draft report on relevant registered titles has been prepared. We await the results of our local search in respect of the land comprised in those titles. We have not, for present purposes, raised CPSEs of the Council in respect of its titles. We await confirmation whether the Council expects LUL to have provided replies to CPSEs in respect of its titles. You will be aware of an application by LUL for first registration of sub-surface interests expressly excluded from the Council's titles. Our report will not extend to those sub-surface interests as they are not considered relevant and there is no title yet available to review and report upon.

3. The Council are keen to understand what the position is with Lambeth Council – has agreement been reached with Lambeth or are there outstanding issues? If there are, what are those issues? We have a meeting with Lambeth scheduled for Monday 8 February to run through any outstanding issues on the section 106 agreement, we do not believe any are insurmountable.
4. WCC are amenable in principle to transfer the freehold of the stairs and ramps. Noted
5. WCC do want to see the commercialisation issue addressed in the documentation. We would be happy to review and take instructions on any suggestions you may wish to put forward. GBT understands the need for the Council to satisfy its duty to achieve best value and looks forward to discussing this aspect with the Council once the Council has received its valuation advice, whereupon it would seem sensible to convene a meeting between the Council or its valuers and GBT's surveyor, Martin Woodhouse, to discuss how that duty can be satisfied.



Ian Cameron Legal Director, Government and Infrastructure

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For and on behalf of Bircham Dyson Bell LLP
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British Legal Awards 2015 'Property Team of the Year'

Legal 500 UK Awards 2015 'Public Sector Firm of the Year'