



 Report on Contract Terms.

Client London Borough of Southwark

Property 160 Tooley Street, Southwark London SE1 2JP

Date 6th December 2012

Introduction

The Contract is between Tooley Street Investments Limited (the Freehold Registered Proprietor) and the Council and confirms the sale of the Property for £170,000,000.00 exclusive of any VAT.

The Contract anticipates completion taking place on 14th December 2012 (by 2pm) and the parties are, in any event, proceeding on the basis that there is a simultaneous exchange and completion, accordingly some of the terms of the draft Contract are not particularly relevant (as there will be no period between exchange and completion.)

The Contract is in accordance with the Heads of Terms subject to certain refinements which we will come onto below.

Main Operative Provisions

The Contract incorporates the Standard Commercial Property Conditions (Second Edition) so far as relevant and on the basis that we are proceeding to a simultaneous exchange and completion, very few of those standard conditions are actually applicable to the Contract, in any event. To the extent that the Standard Commercial Property Conditions apply, they are standard terms that one would expect to find in a freehold sale purchase contract.

Title

The Seller shall transfer the registered freehold title with full title guarantee (which is the best form of title available) and we can confirm that subject to payment of stamp duty land tax that upon completion of this transaction the Council will be registered with Freehold Title Absolute at the Land Registry.

Under clause 5 in the Contract, the Council acknowledge that the Seller has deduced good title and we can confirm that this is the case under the terms of the Contract and we have reported to you on the terms of the title so deduced and have put in place protective searches in order to deal with completion and post-completion matters.

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With reference to clause 6 of the Contract, the incumbrances affecting the Property are a standard list of items and as you occupy the Property, you are probably best placed to provide information on whether or not any third party is occupying or otherwise claiming any unregistered interest in the Property. In relation to the other items in clause 6:

- 6.1.3 – We confirm that we have carried out all appropriate enquiries and have reviewed the registered title and this is acceptable; the Charge registered against the Title to the Property will be cancelled upon completion and the appropriate documentation handed over at completion (see clause 4.7);
- 6.1.4 - The Letting Documents primarily relate to your Agreement for Lease and Lease and any occupational interest (being the Lease of the Substation and the Residential Block); we have reported on these documents elsewhere in this Report and we would note that the main interest here (the Council's Lease) will be merged in the freehold and thereby cancelled at the time of completion.
- 6.1.5 - The documents referred to here essentially comprise the original Section 106 Planning Agreements (there are two of them) and the Deed of Easement relating to the rear access; these documents are reported on elsewhere in this Report. In relation to the first Section 106 Agreement, we understand that this was supplemented by the second Section 106 Agreement and is therefore of no relevance, albeit the Seller is not able to confirm this point. We note that the Council have checked their records and there are no outstanding issues under either of the Section 106 Agreements.
- 6.1.6 - This is a cross-reference to the standard conditions and the Conditions refer to matters specified in the Contract, discoverable upon inspection, matters which the Seller does not or could not reasonably know about, matters disclosed by searches and public requirements. You will be aware of any matters apparent upon inspection and there are no adverse matters revealed by our Local Authority Search.¹

Completion

As mentioned above, completion will take place immediately following exchange of Contracts. The latest time for completion under the terms of this Contract is 2pm however it is anticipated that the monies will be transferred in time for completion in the morning of completion and the

¹ It should be noted that the Seller is a Guernsey Company and as such, we suspect will not have any assets available to it in the event of a breach of any contractual term including the obligation to provide good title. That being said, there are very limited obligations on the part of the Seller under the terms of the Contract (as one would expect) and on the basis that the Transfer is executed in accordance with Land Registry requirements, there is no reason why Land Registry would reject any application. We have carried out limited due diligence in relation to the Seller and are not aware of any particular issue with regard to the Seller or its solvency; Land Registry searches have been carried out on the Council's behalf which provide the Council with protection following completion.

Seller's solicitors have confirmed that they are prepared to accept the transfer of the monies direct to their client account in readiness for completion.

Insurance

You need to ensure that you have all appropriate insurances in place in relation to the Property at the time of completion including comprehensive insurance in respect of the Building itself together with any lift, plant, machinery and equipment insurance.

At the time of completion, the Seller shall cancel the insurance which it has in place in relation to the Property [*and will apply for a refund from the insurers of any insurance premiums paid in advance. There is a risk here to the Council in that the Seller is an offshore Company and even if it receives the refund of the insurance premium (and we see no reason why this would not occur) it might be difficult to recover the same from the Seller after completion. Although this is a standard arrangement under contracts, the sums involved are relatively substantial (for the buildings insurance alone, we are looking at something in the region of £20,000).*]

With reference to clause 9.4 of the Contract, this is just to cover the remote possibility that there is a terrorist attack during the course of the rest of the insurance year (expiring June 2013) in which case there would be a re-adjustment to the insurance premium for terrorism. It has been accepted on the basis that the risk is highly remote.

The Seller has confirmed that there are no arrears of insurance or rent at the moment.

Clawback

This clause has been the most heavily negotiated and the current position, whilst reflecting the Heads of Terms, does go into more detail.

The basic aim behind the clawback was to ensure that the Seller was not "embarrassed" by a subsequent sale by the Council at a much higher value. Given the fact that the Council is paying market value for the Property today, the likelihood of the Seller being "embarrassed" is remote. That being said, the Seller has insisted (despite subsequent negotiation) on a three year period and if there is a disposal by the Council during the three year period (from completion) then the clawback provisions will apply.

In brief, if the clawback provisions apply, then the Council has to pay the Seller 25% of any uplift. The uplift is calculated by deducting from the disposal proceeds received by the Council all the acquisition costs, any holding costs, any costs which go to an actual improvement in the value of the Property and the further sum to allow for indexation of the £170,000.00 to cover off against inflation.

A "disposal" is widely defined and effectively captures any disposal of the beneficial or legal interest by way of transfer or otherwise of the Property (or a part of the Property) but the grant of a lease at a rack rent is specifically excluded from the definition of disposal. Also certain disposals are specifically permitted including:-

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- A disposal to a local or central government body;
- A disposal of the residential block – albeit if you subsequently dispose of the Property then the receipts from the disposal of the residential block would be added back into the calculation;
- The grant of a lease of the plant and equipment in the Property for the purposes of releasing capital allowances.

The Seller may assign the benefit of these provisions to a third party (indeed it is likely that it will do so following completion) and if the Seller obtains a Deed of Novation of its interest in favour of that third party, then the Seller is released from its obligations under clause 10 – the only really material obligation under clause 10 is confirmation that the clause will not be registered at the Land Registry.

VAT

VAT on the purchase price at 20% will be payable - £34,000,000.00.

This figures does not actually need to be paid at the time of actual completion and can be delayed until (at the latest) 31st January 2013 – subject to receipt of a valid and appropriate VAT Invoice. If the Council receive the VAT credit any earlier, then it has to be paid within 1 working day of receipt.

Capital Allowances

The Seller has confirmed that it has not made any capital allowances in relation to any plant and equipment and other items in the Property (clause 17 of the Contract) and has also further confirmed in replies to enquiries that a similar provision was obtained from the previous/first owner. Therefore there have not been any claims for capital allowances in respect of the plant and equipment within the Property. That equipment will pass to the Council upon completion.

We understand that the Council is not able itself to claim capital allowances but there may be the ability to grant a lease of that plant and equipment to a third party in order to release some "value" back to the Council.

Building Contract

On the date of completion, a Deed of Assignment of the benefit of the Building Contract will be completed in favour of the Council. This should be viewed in conjunction with the various letters that will need to be sent out to the individual consultants which is a separate exercise and which we will attend to following completion.