

London Borough of Southwark

Executive Summary: Land at Eagle Wharf

13 April 2016

1. BASIS OF THIS REPORT

1.1 This Summary has been prepared for London Borough of Southwark ("**LBS**") in connection with:

- 1.1.1 the loan agreement;
- 1.1.2 the agreement for lease; and
- 1.1.3 the lease

that LBS proposes to enter into with Mountview Academy of Theatre Arts Limited ("**Mountview**") for the delivery of a new theatre school and ancillary commercial uses in accordance with documents.

1.2 This Report has been prepared as an overview of the agreements LBS is proposing to enter into and is supplemental to our previous note provided in relation to procurement and state aid. We have discussed these with you throughout the transaction and you have of course read it and commented on the detail.

1.3 Terms defined in the documents are used in capitals in this Report.

1.4 The financial provisions have been drafted in accordance with your instructions and as you would expect, we cannot endorse the commercial basis of the financial deal.

1.5 This report is provided by Pinsent Masons LLP and no partner, member or employee assumes any personal responsibility for it nor shall owe a duty of care in respect of it.

2. EXECUTIVE SUMMARY

LOAN AGREEMENT

1. WIDER CONTEXT

1.1 The loan agreement for the Mountview transaction reflects the bespoke nature of the wider transaction. LBS have a dual role as lender under the loan document but also as landowner under the land deal and so the loan agreement has needed to be adapted from a standard LMA property development loan agreement to reflect this dual role.

1.2 LBS have agreed to make available to Mountview an initial loan to fund the costs of Mountview getting the Development through the planning stage, and then a main facility which

will be used to refinance the initial facility and to fund the development costs of the Development.

2. SUMMARY

2.1 The loan

The loan agreement provides for LBS to make an initial loan to Mountview of £500,000 to fund planning costs and then a main loan of up to £25,000,000 to fund the development costs of the Development as well as the refinancing of the initial loan.

2.2 Security

2.2.1 The initial loan is secured by a debenture granted by Mountview and a legal charge over a blocked account of Mountview holding at least £250,000;

2.2.2 Upon the drawing of the main facility the account charge will be released, with the main facility being secured during the development phase by the Mountview debenture (which includes a charge over Mountview's right to occupy the development site under the Development Agreement) and then once the Development reaches PC a legal charge is granted by Mountview to LBS over the Lease granted to Mountview by LBS of the Development site;

2.3 Repayment

There is not a set repayment profile in the loan agreement, instead there is an obligation on Mountview to discuss with LBS the repayment of the loan if they receive any loans or grants over £500,000. The intention is that Mountview will choose to repay the loan from irregular influxes of cash they will receive over the life of the loan. There is however an overriding obligation on Mountview to reduce the amount of the facility to £12,500,000 by the 20th anniversary of the date of the date of the loan agreement. This overriding obligation protects LBS against both enforcement risk (ie, that the value of the property on which the loan is secured does not exceed the amount of the facility) and refinance risk (by reducing the amount of the loan to a level at which it is likely Mountview will be able to obtain commercial funding to repay the facility at the point it needs to be repaid).

The longstop date for repayment of the facilities is 30 years after the date of the loan agreement.

2.4 Interest

Interest on the outstanding loan accrues at a rate of 4.5% per annum and is compounded on a quarterly basis with the principal amount of the loan until the interest payment commencement date. The interest payment commencement date is initially 30 September 2018, although this can be flexed with the agreement of LBS to take into account when Mountview begin to operate from the site and receive income. After the interest payment commencement date interest will become payable at quarterly intervals.

2.5 Lender Protection

The loan agreement is based on a standard LMA (Loan Market Association) Real Estate Development Finance document and therefore contains standard clauses and indemnities which protect a lender when lending to a property owner in a situation such as this. These include the representations, undertakings, tax gross-up and indemnities, increased costs, indemnities, expenses and set-off clauses.

2.6 Default of the Loan

Clause 21 of the loan agreement contains the events of default which if they occur entitle LBS to demand repayment of the loan and enforce their security. The key events of default link to

the non-performance by Mountview of its obligations under the loan agreement and the security documents to which it is party and the insolvency of Mountview. There are also events of default which relate to the property and progression of the Development.

2.7 Assignability

The loan is assignable by LBS during the period in which it can be drawn (ie, up to the date 12 months after practical completion of the Development) only with the consent of Mountview unless the assignment is to an affiliate of LBS or as part of a restructuring of LBS. After that date the loan agreement is freely assignable by LBS. Mountview can't assign the loan agreement without the consent of LBS.

AGREEMENT FOR LEASE AND LEASE

1. WIDER CONTEXT

As previously advised, and as set out in our previous note provided in relation to procurement and state aid, LBS are not able to impose the positive legally binding development obligations on the development for procurement reasons. Mountview is commercially incentivised through the agreement for lease and lease to deliver the theatre school through the use of a structure that does not constitute a public works contract that has to be EU procured. Whilst initial negotiations centred around the use of an agreement for lease (conditional on planning and the letting of a fixed price building contract) and a building lease (pursuant to which Mountview would have built out and which contained a landlord buy back), this proposal was not accepted by Mountview due to the need to ensure the lease was excluded from the security of tenure provisions of the LTA 1954. The lack of security was a deal-breaker for Mountview and a revised proposal was accepted by LBS.

After significant discussion, LBS accepted that Mountview could alternatively build out pursuant to an agreement for lease conditional on planning and a fixed price building contract with practical completion of the building being a trigger for completion of the lease (which is inside the LTA 1954). We expressed our concerns as to the increased procurement risk (now "medium+") but LBS confirmed instructions to proceed, accepting the risk.

The agreement for lease does not contain any positive legally binding development obligations on Mountview to commence the build, although they do have to comply with certain development obligations if they decide to commence. As a result of the change in structure, there is no landlord buy back but if Mountview have not achieved practical completion by 30 June 2018, the parties agree to review progress under the agreement (and agree a solution) and accept that termination may be the route chosen (although there are no obligations on either party to terminate). LBS will also have its remedies under the loan agreement provided Mountview haven't repaid early.

2. SUMMARY – AGREEMENT FOR LEASE

2.1 The draw down of the Lease is conditional upon Mountview:-

2.1.1 securing a planning permission for the development of a theatre school (approved by LBS prior to submission); and

2.1.2 letting a fixed price building contract

by 30 April 2017 and is triggered by practical completion of the building. The longstop date can be extended in certain circumstances (as set out in the definition of Condition Target Date but where there is an appeal, refusal or challenge) but cannot extend beyond 30 October 2017.

If the Conditional Matters have not been satisfied by the Condition Target Date then either party can terminate the agreement.

2.2 Development Obligations

The parties acknowledge that Mountview is not obliged to commence, carry out or complete the Development but Mountview Tenant does commence the Development it has to comply with the obligations set out in Schedule 2 until Practical Completion.

2.3 Planning Permission

Mountview are obliged to obtain planning permission for the Development and agree that they will secure LBS's approval to the draft planning application within 3 months of the date of exchange of the agreement for lease. LBS has 10 working days in which to approve the form of the draft planning application (with a deeming provision if that does not take place). Once LBS's approval, as landowner, has been obtained, Mountview is then under a reasonable endeavours obligation to secure the planning permission as soon as possible. There are general provisions relating to the obtaining of planning permission set out in Clause 4 of the agreement for lease.

2.4 Insurance

Mountview are responsible for insuring the premises from the date of the Agreement for Lease.

2.5 Insolvency

The agreement for lease can be terminated in the event of Mountview becoming insolvent.

2.6 Review

LBS and Mountview are required to review the agreement for lease in the event of:-

- 2.6.1 the conditions set out at paragraph 2.1 having not been met;
- 2.6.2 Mountview's failure to observe or perform under the terms of the Agreement for Lease and such breach is not capable of remedy;
- 2.6.3 practical completion of the building has not completed by 30 June 2018; or
- 2.6.4 the parties have been unable to resolve a dispute pursuant to Clause 23 of the Agreement for Lease.

It is acknowledged that a review in these circumstances may result in the termination of the agreement for lease in which case Clause 16.2 applies (where, in default, Mountview have granted a security power of attorney in favour of LBS).

2.7 Access

Mountview are able to access the site for the purposes of carrying out site surveys, investigations in connection with the development (as well as rights to erect and maintain scaffolding, hoists, ladders and related equipment at the western and southern boundaries) on LBS standard terms set out in Schedule 4 of the agreement for lease.

3. SUMMARY – LEASE

3.1 Term

99 years.

3.2 **Rent**

£175,000 per annum (subject to rent review) to commence following the expiry of the lease for Mountview's current premises. The rent review provisions are set out in Schedule 1 to the lease (including both RPI and land value reviews) and have been the topic of much discussion. The finally agreed provisions for the land value rent review include a valuation of the freehold estate in the Premises on the basis of the planning permission obtained pursuant to the agreement for lease (or such supplementary or additional planning permissions obtained at the time of the review) but disregarding all structures and buildings located on the Premises so that the value relates to the land only.

3.3 **Permitted Use**

During the Funding Period, the use of the premises is limited to use as a theatre school with ancillary retail and commercial space in accordance with the planning permission obtained pursuant to the agreement for lease. After expiry of the Funding Period (and whilst LBS is the freeholder), the controls fall away save for the absolute prohibition on residential (which must be by reference to Class C of the Use Classes Order 1987).

3.4 **Alienation**

Assignment of part of the Premises is prohibited.

Assignment of the whole of the Premises is permitted during the Funding Period and during last 7 years of the term with LBS's consent (not to be unreasonably withheld or delayed).

Whilst LBS is the freeholder, Mountview are prevented from assigning or underletting the whole or any part of the Premises to any religious organisation for use as a church or place of worship.

Sub-letting of the retail/commercial space is permitted subject to LBS's standard restrictions on use (contained in Clause 4.13).

3.5 **Alterations**

Substantial redevelopment of the premises after practical completion and during the Funding Period can only be carried out with LBS consent (acting reasonably), with no consent required for anything that isn't substantial or after expiry of the Funding Period.

3.6 **Insurance**

If the Premises are damaged or destroyed by an insured risk then Mountview are obliged to reinstate the premises and shall use its own monies to make up any shortfall.

In the event that reinstatement of the premises is frustrated then Mountview are to hold the proceeds of any insurance on trust for themselves and LBS in proportion to their respective interests in the premises. Where reinstatement is not possible, Mountview is entitled to terminate (and must pay LBS its share of the insurance proceeds within 20 working days of receipt).

If the Premises are damaged or destroyed by an uninsured risk then Mountview are entitled to a rent cesser for a maximum of 3 years period (to tie in with the loss of rent insurance), at which point Mountview is entitled to terminate if the Premises have not then been reinstated.

3.7 **Forfeiture**

If any rent is unpaid for 20 working day after becoming due or (whilst LBS is the freeholder) Mountview are in breach of the restrictions on permitted use (referred to in paragraph 3.3 above), LBS may forfeit.

3.8 **Pre-emption**

Mountview has a right of first refusal triggered by LBS intending to dispose of its freehold estate in the site or on the grant of any reversionary lease. Terms are set out in Schedule 2 of the lease.

Pinsent Masons LLP
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