AK PLANNING

TOWN PLANNING CONSULTANCY

Assessment of S106 Agreement

Riverside Walk

Marsden

Introduction

This report has been commissioned by SBHomes with regard to a S106 Obligation applied to planning application reference 99/91517 which is an outline planning approval for residential development at Clough Lee Mills, Marsden.

In particular it will assess the need to retain funds in connection with the requirements of the 106.

Assessment

The S106 contains the following relevant requirements: -

3. THE Owner covenants with the Council that it will not cause or permit the 3 Development or any part of it to be implemented until:-

(i) there has been deposited with the Council a Bond in a form and for a term satisfactory to the Council in the sum off 12,000 which shall include provision for increase in the sum thereby secured upon every anniversary of the date of deposit in accordance with the Building Cost Information All in Tender Price Index for the performance of the obligations of the Owner under Clauses 4 and 7 of this Agreement.

(ii) there has been deposited with the Council a Bond in a form and for a term satisfactory to the Council. in. the sum of f 11,500 for the performance of the obligation of the Owner under Clause 6(a) of this Agreement.

The sums of money contained in the above relate to particular works in the agreement and (as stated above) these are in clauses 4 and 7 for £12000 in part (i) and Clause 6(a) for the £11,500 in clause 6(a).

In effect the monies are held as a fall back for the Council to claim IF the developer fails to carry out the requirement of the relevant clauses.

We therefore have to examine clauses 4,7 and 6(a) and assess if the works required have been done.

Clause 4

IN conjunction with and as part of the Development the Owner shall before the Date of Practical Completion:-

(a) complete the following works to the satisfaction of the Council

(i) the River Wall Works

(ii) the Concrete Platform Works

(iii) the Landscaping Works

(b) provide in accordance with the Gate Specification a timber gate across the Riverside Walk in the location indicated on Plan No. 2

(c) surface the Riverside Walk with a bitmac wearing course to the appropriate British Standard if such works shall be considered necessary by the Council.

Clause 7

This clause allows the council to carry out the works required by clause 4 should the developer default or go bankrupt.

Clause 6(a)

Upon completion of the Landscaping Works to the reasonable satisfaction of the Council the Owner shall pay Council the sum of £11,500 which represents the capitalised cost of the future annual maintenance of the Landscaped Area and the Riverside Walk (including the Concrete Platform and the River Wall) together with the cost of inspection including salary and overheads and the Landscaped Area shall at the same time transferred to the Council for a nominal consideration pursuant to Section 9 of the Open Spaces Act 1906

Consideration of Clauses 6(a) and 7

Clause 7 is a claw back should the works under clause 4 not have been done, for our purposes here we can ignore this clause at this point.

Clause 6(a) is a payment for future maintenance and should have been made when the landscaped works were completed. We have not seen evidence that this payment was or was not made.

Consideration of Clause 4

This clause requires various works as follows: -

(i) The river wall works

These are defined as the following: -

Works specified in the Structural Report reference E00/2426/R001 dated July 2001 annexed hereto

The following additional works and/or requirements-

(a) The drainage of the retaining wall to be carefully investigated prior to removing the existing outlets to ensure that the existing drainage paths are maintained and there is not a build up of water behind the wall

(b) Vegetation and trees to be dealt with along the lengths of the wall and - . localised repairs carried out

(c) Mass concrete to be placed as fill to the rear of any rebuilt section of wall (excluding those rebuilt prior to 28th September 2001)

(d) Shot blast existing retaining wall fence re-paint re-set where necessary and repair or replace damaged rails

(e) Incorporate original Bailey Ancion sign into new or restored railings

Given the length of time involved (some 22 years) it is not now possible to tell if all of the above works were carried out. The Bailey Ancion sign is in place as is the sealed walkway, but without significant and intrusive investigations it is not possible to say that mass concrete has been placed as fill.

(ii) The concrete platform works

These are defined as: -

1. *Works specified in the Structural Survey Report reference E00/2426/R002 dated July 2001 annexed hereto*

2. *The following additional works and/or requirements:-*

a) *Further investigation to be carried out to Beam A to ensure the steel member , is structurally sound before attempting a concrete repair*

b) *Existing surface of the platform to be cleaned and repaired. The drainage system to be restored or replaced. Tarspray/chip finish (such as "Fibre Deck") to be applied to the repaired platform surface if required by the Council's Landscape Architect.*

c) *4 No. seats and 1 No. litter bin to be provided to the seating area in accordance with a design to be submitted to and agreed with the Council*

We can see that some of the works described have been done, but we cannot confirm that all the works were done.

(iii) the Landscaping Works

These are defined as: -

The Landscaped Area to be cleared of all deleterious material and ripped with a 3 tine ripper drawn 500mm deep at 600mm centres and planted with forestry transplants at 1.5 metre centres and the area mulched with 75mm of 15/60 grade forest bark.

Species to be as follows:-

Sorbus aucuparia 25%

Quercus petraea 25%

Corylus avellana 25%

Viburnum opulus 25% mill pond frontage

To be planted in groups of five of the same species all to BS.3936

The landscaped area is now overgrown (it is at the end of the platform) and it is impossible to tell if this planting was done.

Other Matters

Clause 5 of the 106 is interesting as it states: -

UPON completion of the River Wall Works the Concrete Platform Works and any necessary surfacing of the Riverside Walk carried out pursuant to Clause 4(c) above the Riverside Walk and the Concrete Platform shall be deemed dedicated as public highway with footpath status and thereafter the Riverside Walk the Concrete Platform and the River Wall shall be maintainable at the public expense.

In effect if it can be proven that the works mentioned (river wall and concrete platform) were completed the riverside walk, wall and platform become publicly maintained.

Conclusion with Regard to the Clauses

I have personally visited the site and it is impossible, with a visual inspection, to conclude that all of the clauses within the section 106 have been complied with. It is also quite possible that they have.

Some of the works required such as the mass concreting would have to be revealed, and it is impossible to say that the landscaping works work completed as the area of landscaping is now 20 years on and much changed.

Conclusions

It is our conclusion that we apply for the discharge of the S106 based on two facts, firstly it has been partly complied with (we cannot conclude on all matters) and secondly that the time between the 106 and now 922 years) has rendered the requirements useless.