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Our ref S3.RDW.BAR.527.56

3 February 2021

Your ref APP/A1720/W/20/3252180 & 3252185

Dear Sir

**Town & Country Planning Act 1990**  
**Appeals by Fareham Land BP, Bargate Homes Limited**  
**Site Address: Land at Newgate Lane North, Fareham PO14 1BA**  
**and Land at Newgate Lane South, Fareham PO14 1BA**

The purpose of this letter is to explain the property ownership of the appeal sites and also to clarify the position relating to the rights of the agricultural tenant, following the letter dated 20 January 2021 from Michelmores to the Planning Inspectorate. In summary:

- Newgate Lane North and Newgate Lane South are both subject to the same agricultural tenancy agreement
- An agreement is in place for the surrender of the tenancy over Newgate Lane South
- Following the grant of planning permission, the landlord has the right to terminate the tenancy over Newgate Lane North
- The tenant has the ability to delay possession of Newgate Lane North for a short period, but this will not interfere with the proposed development programme under which the development of Newgate Lane North cannot commence until after the first dwelling has been commenced on Newgate Lane South.

**Property ownership**

The freehold of the appeal site for appeal PINS REF 3252185/Application P/19/0460/OA (**Newgate Lane South**) is owned by Gordon Smith, Richard Smith and Juliet Blanche Smith.

The freehold of the appeal site for appeal PINS REF 3252180/Application P/18/1118/OA (**Newgate Lane North**) is owned by a Sustainable Land Products Ltd (**SLP**)



Bargate Homes Ltd (**Bargate**) has a contract to purchase Newgate Lane North and an option to purchase Newgate Lane South. We are instructed that, if the appeals are successful, Bargate will exercise the option and complete the purchase under the contract. It will then own both appeal sites.

### **Tenancy agreement**

Both Newgate Lane North and Newgate Lane South are subject to an oral tenancy in favour of B Southlands Ltd (the Tenant). The tenancy is protected by the Agricultural Holdings Act 1986. The aggregate rent is approximately £400 a year.

The owners of Newgate Lane South have entered in to an agreement with the Tenant by which the Tenant will surrender the tenancy over Newgate Land South in return for a substantial payment.<sup>1</sup>

The tenancy will continue for Newgate Lane North and, on completion of the purchase Bargate will become the landlord under the tenancy agreement.

### **Obtaining Possession**

As explained in Michelmore's letter the 1986 Act gives the landlord the absolute right to terminate the tenancy if it can demonstrate that "*the land is required for a use, other than agriculture – for which [planning] permission has been granted...*". There is no discretion. If planning permission is granted and the landlord needs the land to carry out the permitted development it will be able to serve a notice under case B of schedule 3 of the 1986 Act to terminate the tenancy. 12 months' notice is required expiring on 29 September in any year. Assuming that the appeal decision is given prior to 29 September 2021, the landlord will be entitled to give notice which will expire on 29 September 2022.

Michelmore's letter explains that the Tenant has the ability to refer the notice to arbitration. This is correct. If so, the landlord will need to demonstrate to the arbitrator that the land is required for development purposes when the notice or within a reasonable period afterwards. In the current circumstances, this will not be difficult.

Michelmore's have asserted that the Tenant may seek to use arbitration to delay possession. This is not because of any hardship the tenant will suffer. It is a cynical attempt to extract money from the landlord of Newgate Lane North, similar to the amount that has been agreed for Newgate Lane South.

Arbitration will only delay possession if the arbitration cannot be determined 6 months before the notice expires. In these circumstances the arbitrator has the discretion to postpone the termination of the tenancy by up to 6 months. We are satisfied that, in view of the lack of merit in the Tenant's position, where the arbitration is blatantly being used to delay possession so as to extort money from the landlord, the arbitration proceedings will not delay possession and Bargate will be able to obtain possession on 29 September 2022.

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<sup>1</sup> To avoid confusion, please note that the letter from Michelmore's confuses the 2 sites and incorrectly states that their client has reached agreement with the owners of Newgate Lane North whereas, in fact, agreement has been reached with the owners of Newgate Lane South.



Michelmores's letter seeks to suggest that by preventing Bargate from having access to Newgate Lane North their client can prevent Bargate from complying with any pre-commencement conditions or site investigations and so, potentially, frustrate the notice to quit because "a Case B notice to quit will only be valid if the landlord can show that it can complete all of its planning conditions and pre-development works before the expiry of the notice to quit or within a reasonable period thereafter". This is misconceived. Even if the inability to obtain access to the land means that Bargate is not immediately ready to commence development on Newgate Lane North it will not affect the validity of the notice. If Bargate intends to commence survey work etc. immediately following the expiry of the notice to quit, as a necessary prerequisite to commencing development, this will satisfy the requirements of the 1986 Act. In any event, in the meantime Bargate will have full access to Newgate Lane South and will be in a position to commence development on Newgate Lane North as soon as vacant possession is obtained.

It should also be remembered that the planning permissions here will be outline permissions. If both appeals are successful Bargate will acquire both Newgate Lane North and Newgate Lane South. This is a large site. Following the appeal decisions it will take several months to obtain the necessary reserved matters approvals to enable development to commence. Assuming an appeal decision is received 3 months after the appeal inquiry it is unlikely that development would commence before August 2022. In the short period following this date until Bargate obtains possessions of Newgate Lane North it will be able to progress works on Newgate Lane South.

This is consistent with the sequencing that has been agreed with the local planning authority, and reflected in the agreed conditions. These provide that development shall not commence on Newgate Lane North "until construction of the first dwelling on the site subject of planning permission (P/19/0460/OA) [Newgate Lane South] has been commenced". This recognises that Newgate Lane South can be developed independently, if necessary and in view of

- the works required before construction of the first dwelling can be commenced on Newgate Lane South and
- the infrastructure to be provided on Newgate Lane South before first occupation, at Newgate Lane North is permitted under the proposed Grampian condition,

it is clear that any delay in obtaining possession of Newgate Lane North will have little or no impact on the overall development programme.

Yours faithfully

**LESTER ALDRIDGE LLP**