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Our Reference: 117676/3/1012/1012

Your Reference:

Date: 20 January 2021

The Planning Inspectorate  
Room 3/J  
Temple Quay House  
2 The Square  
BRISTOL BS1 6PN (Your Ref: APP/A1720/W/20/3252180)

**By Email Only: Alison.bell@planninginspectorate.gov.uk**

Lee Smith  
Fareham Borough Council  
Department of Planning & Development  
PO BOX 82  
Civic Offices  
Civic Way  
Fareham PO16 7TT (Your Ref: P/18/118/0A).

**Copy Email Only: lsmith@fareham.gov.uk**

Dear Sirs

**TOWN & COUNTRY PLANNING ACT 1990  
APPEALS BY FAREHAM LAND LP, BARGATE HOMES LIMITED  
SITE ADDRESS: LAND AT NEWGATE LANE, NORTH, FAREHAM, PO14 1BA  
AND LAND AT NEWGATE LANE, SOUTH, FAREHAM, PO14 1AZ**

We act on behalf of B Southlands Limited who is the agricultural tenant of the land which is the subject of the two planning applications set out above. We believe that our client is the tenant of the entire site which is the subject of a planning application but in any event we attach a plan which shows the extent of the tenanted holding.

Our client has reached a commercial agreement with the owners of the land at Newgate Lane North but has yet to resolve its dispute with the owners of the land at Newgate Lane South.

It is our understanding that both applications are the subject of an appeal which is due to be heard by way of a Public Inquiry next month.

It is also our understanding that the appeals are only likely to be successful if the owners can guarantee that the individual sites will not come forward for development in isolation of each other. Namely, the success of each site is dependent on the other being able to be developed at the same time because of a number of interrelated planning and logistical issues.

Ensuring that the sites do come forward together can of course be achieved either by way of a planning condition or by the imposition of a Section 106 Agreement in the usual manner.

However, what also needs to be obtained as a condition precedent of such an arrangement is the agreement of both landowners that they will act in concert in respect of their ownerships.

The reason that the owner of the land at Newgate Lane North has reached an agreement with our client is because of the significant security of tenure bestowed by the Agricultural Holdings Act 1986. Our client has a secure tenancy governed by the 1986 Act and as such a landowner has to comply with the provisions of that statute when trying to obtain vacant possession for development purposes.

The procedure for obtaining vacant possession is governed by Case B of Schedule 3 of the 1986 Act which provides that a notice to quit may only be served once a planning permission is obtained. Once the notice to quit is served then the tenant of the agricultural holding can refer the notice to arbitration and the effect of the notice to quit is immediately stayed on that reference being made. The arbitrator will then consider the validity of the notice to quit and the landlord has to demonstrate that the land is required for development purposes at the date of expiry of the notice to quit or within a reasonable period thereafter.

The tenancy in question has a termination date of 29 September and the 1986 Act provides that 12 months' notice to quit has to be given expiring on a term date. Certain exceptions do exist within the 1986 Act where shorter notice can be given but none of them apply in this case. This means that the earliest that vacant possession can be obtained of the land at Newgate Lane South is 29 September 2022. This is assuming that a valid planning permission can be obtained before 29 September 2021 **and** that arbitration proceedings are concluded in the landlord's favour by that date.

Therefore, even if the landlord is successful at arbitration then the timeframe for obtaining vacant possession of this land is lengthy. The tenant will, in any event, contest the validity of the notice to quit at arbitration if sufficient grounds exist to do so. It is anticipated that sufficient grounds will exist but that of course cannot be guaranteed at this stage.

The obstacles to the landlord in obtaining vacant possession have been set out at length in open correspondence over the last couple of years. In addition, it is the tenant's contention that the landlord has trespassed onto the holding in carrying out various environmental and ecological surveys which are a requirement of the planning process. That is contested by the landlord and that aspect of the dispute has yet to be resolved.

However, the tenant has confirmed to the landlord that no further access will be tolerated and any such use of the holding will be viewed as an act of trespass. This will have implications for any further surveys that are required either as part of the planning application process or which need to be completed prior to development commencing. It will be appreciated that 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.

The purpose of this letter is to inform you of the tenant's position in respect of these planning appeals. In the absence of a settlement agreement with Fareham Land LP then the tenant, whilst acting lawfully at all times, will offer no cooperation in respect of allowing access or facilitating the planning process. This will mean that it is highly unlikely that the sites can be developed in concert with each other and therefore means that neither site is likely to be granted approval at the forthcoming planned Public Inquiry.

If you have any queries please do not hesitate to contact the writer, Ben Sharples.

Yours faithfully

A handwritten signature in black ink that reads "Michelmores LLP". The script is cursive and fluid, with the letters connected. The "M" is large and prominent, and the "LLP" is written in a similar style.

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Enc: Plan