

HEADS OF TERMS FOR A COLLABORATION AGREEMENT (SUBJECT TO CONTRACT)

Overview

South Kesteven District Council (SKDC) acquired in early 2019 land and buildings known as the "Cummins" factory which has previously provided employment for up to 500 people. Burghley House Preservation Trust (BHPT) own land adjacent to this site which has an extant consent for employment uses. BHPT as a Charity need to transfer the land to Burghley Land Limited (BLL) a wholly owned subsidiary of BHPT for the development to proceed.

These adjacent land holdings to the north of Barnack Road, Stamford (the Property), now known as St Martin's Park, as shown edged red and blue on the attached plan extends to approximately 14.429 hectares (35.65 acres) and in total is to be promoted for a mixed-use development including commercial, residential and retirement along with associated public open space, car parking, retail and infrastructure.

These Heads of Terms are the agreed terms for a Collaboration Agreement between the Landowners for the master planning, promotion and disposal of the Property and they are subject to the satisfactory completion of an agreed Project Plan.

1 Property

- 1.1 The freehold of the Property is owned by the following Landowners:
- 1.2 South Kesteven District Council - 6.208 hectares (15.34 acres) – shaded red on the Plan
- 1.3 Burghley House Preservation Trust - 8.221 hectares (20.31 acres) and 0.221 hectares (0.55 acres) – shaded blue and orange on the attached Plan.

2 Landowners

- 2.1 South Kesteven District Council (SKDC)

St Peter's Hill
Grantham
Lincolnshire
NG31 6PZ

Contact: Jane McDaid (Assistant Director of Growth)
Email: jane.mcdaid@southkesteven.gov.uk

- 2.2 Burghley House Preservation Trust (BHPT) and Burghley Land Limited (BLL)

Burghley Estate Office
61 St Martins
Stamford
PE19 2LQ

Contact: David Pennell, Estates Director
Email: david.pennell@burghleyestate.co.uk

3 Landowners Solicitors

SKDC

Pinsent Masons
1 Park Row
Leeds
LS1 5AB

Contact Anne Bowden
Telephone: 0113 2945297
Email: anne-bowden@pinsentmasons.com

BHPT and BLL

Farrer & Co
66 Lincoln's Inn Fields
London
WC2A 3LH

Paul Krafft
0203 375 7442
paul.krafft@farrer.co.uk

4 Landowners Agents

SKDC

Lambert Smith Hampton
1 Oakwood Road
Doddington Road
Lincoln
LN6 3LH

Contact Sam Elkington
Telephone: 07887 774155
Email: selkington@lsh.co.uk

BHPT and BLL

Bidwells
Bidwell House
Trumpington Road
Cambridge
CB2 9LD

Mark Buddle
07834 943497
mark.buddle@bidwells.co.uk

5 Primary Objective

- 5.1 The Primary Objective of the Landowners is to create space for a minimum of 500 jobs on the Property through the grant of a Satisfactory Planning Permission for a mixed-use development (comprising residential, commercial and retirement uses along with associated public open space and infrastructure) that will result in the high-quality Proposed Development on the Property that will enhance and preserve the economy of Stamford providing new jobs and varied living accommodation to meet the needs of the local economy and residents as well as improving and protecting the setting of Burghley House and its grounds.

6 Development Costs and Profit

- 6.1 The Landowners agree to fund the approved costs 50/50 with each instruction being in joint names and cost being invoiced to each Landowner on a 50/50 basis which they undertake to pay promptly.
- 6.2 The Landowners agree that the proceeds of disposal will be settled 50/50
- 6.3 The Landowners agree that a Development Costs Account will be maintained by each Party, fully referenced with copy invoices, receipts, instructions and contracts.
- 6.4 Infrastructure costs, if any will be discussed and approved in a Project Plan as and when required.

7 Project Plans

- 7.1 The Landowners will work to create and approve Project Plans to achieve the Primary Objective, and shall include but not be limited to;

- 7.2 A Planning Strategy based on an approved Masterplan for a high-quality mixed-use development to achieve a Satisfactory Planning Permission for the redevelopment of the Property by obtaining an outline planning permission.
- 7.3 A Disposal Strategy to allow for the individual uses that will be permitted as part of the Satisfactory Planning Permission to either be disposed of on a subject to planning basis to third party developers or to be retained by both, or either, of the Landowners
- 7.4 A critical time path and programme for the project.
- 7.5 A future Estates Management Strategy for infrastructure elements and common parts.
- 7.6 A communication and Marketing Strategy for St Martins Park.
- 7.7 The Project Plans may be reviewed periodically by the Project Board.

8 Landowners Requirements

- 8.1 The Planning Strategy and Disposal Strategy shall have due regard to the following Landowners Requirements:
- 8.2 The Landowners will have joint input and control over the design of the masterplan in order to achieve the Primary Objective.
- 8.3 The Landowners will follow a Best Sales Process within the Disposal Strategy.
- 8.4 The Landowners will each be able to acquire an investment interest in the development at open market value, to secure future income. This could potentially be achieved through both residential and commercial development.

9 Restrictions on Each Party's Title

- 9.1 Each Landowner will agree to appropriate restrictions on the registered title to each other in respect of the land they own within the Property.
- 9.2 By removing these restrictions at the point of each land disposal, each Landowner will receive its share of the Sale Proceeds when each parcel of land is sold (whether as one or individually).

10 Undertakings

- 10.1 Both SKDC and BHPT undertake with each other that in respect of the Property:
- 10.2 No Landowner will create any material encumbrance that will affect the Property.
- 10.3 Neither Landowner shall do anything with or on their respective land that could fetter the planning promotion of the whole of the Property coming forward as a comprehensive redevelopment proposal.
- 10.4 During the existence of this Agreement, neither party shall sale or enter into any option, promotion or lease agreements on its part of the Property that could fetter the ability to either obtain a Satisfactory Planning Permission or to dispose of all or any part of the Property.
- 10.5 Neither Landowner can assign its interest in the Collaboration Agreement, save for SKDC's ability to assign the Agreement to a 50/50 owned subsidiary company.
- 10.6 The Landowners will each declare in writing to the Landowners' solicitors before the date of this agreement any past disputes, contamination, easements, rights of way, leases, tenancies, covenants, options or other encumbrances which would or might materially adversely affect the full implementation of the provision of the agreement or which might materially reduce the value of the Property.

- 10.7 Each Landowner will deliver vacant possession of their land, at their respective costs, as soon as possible after the date of the Satisfactory Planning Permission but nevertheless within three months as a longstop date.
- 10.8 The Landowners shall permit entry to those parts of the Property respectively owned by them at all reasonable times on reasonable notice for the purpose of carrying out any soil or other investigations or survey on terms that the party so entering causes as little damage as possible and makes good all damaged caused.
- 10.9 The Landowners agree to co-operate to minimise the impact of tax (where applicable).
- 10.10 Any title matters on either part of the Property will be the responsibility of the respective Landowner to resolve and any cost implications will be incurred by the relevant Landowner and will not be a shared cost.
- 10.11 It is understood that SKDC may have an overage provision as part of the acquisition of its part of the Property. SKDC accept that it will be responsible for any payments due to the previous landowner and that these payments will not be passed onto any purchaser of the Property (nor will they become a shared cost).

11 Landowners' Development Costs and Costs excluded from Development Costs

- 11.1 Any clean-up costs associated with any contamination on respective landownerships will be borne solely by that owner.
- 11.2 Holding costs - Any management costs including but not limited to; empty rates, security, insurance and all other associated costs in respect of its site will be the responsibility of the individual landowner.
- 11.3 SKDC acknowledge that any ongoing environmental liability to the former owners that it accepted as part of the acquisition of its part of the Property will not be passed on to any purchaser when the Property is sold following the grant of a Satisfactory Planning Permission.

12 Project Board and Executive Team

A Project Board shall be constituted with agreed terms of reference. The Board will comprise of:

- 12.1 The Board will comprise
 - 12.1.1 2 SKDC representatives – Leader and Chief Executive
 - 12.1.2 2 BHPT Trustees – Chair and one other Director/Governor
- 12.2 An Executive Team shall be constituted with agreed terms of reference and delegation and will comprise
 - 12.2.1 1 BHPT representative – David Pennell
 - 12.2.2 1 SKDC representative – Jane McDaid
- 12.3 Decisions taken by the Project Board will require unanimous approval and a quorum will be 1 member of the Board from each Landowner.
- 12.4 The Executive Team will be responsible for the preparation of the Project Plan and any proposed future amendments for review and approval by the Project Board.
- 12.5 Once approved, the Project Plan will be adopted and form part of the Collaboration Agreement, and the Executive Team charged with its implementation. Further Project Plans can be brought forward for approval if required.
- 12.6 The Council will ensure that any decisions to be taken by the Project Board that require Council governance, are taken with the benefit of Council governance. Enough time will need to be allowed to ensure that this can take place.

- 12.7 All public statements, releases and announcements in respect of the Property or the project are to be approved by the Project Board
- 12.8 The Project Board will attend regular meetings with the Executive Team and all Project Board Meetings will be on a quarterly basis.

13 Satisfactory Planning Permission

- 13.1 Satisfactory Planning Permission means an outline planning permission granted on the Property which achieves the Primary Objective and is free from challenge.

14 Planning Agreements

- 14.1 The Landowners will be required to enter into any planning agreements required for the Satisfactory Planning Permission, provided that these:
- 14.2 relate only to the extent of the Property and any land required for highways works comprised within the planning application area.
- 14.3 are only enforceable following the commencement of the development (other than payment of council legal fees);
- 14.4 has been approved by the Landowners (such approval not to be unreasonably withheld or delayed) and does not require the Landowners to expend any money prior to the sale of the Property; and subject to:
- 14.5 the relevant planning agreement containing terms which either release the Landowners from all liabilities, obligations, restrictions and conditions under the planning agreement once it has parted with its interest in the Property or the Landowners are indemnified in respect of any such liabilities, obligations, restrictions under the planning agreement from which it is not so released once it has parted with its interest in the Property.
- 14.6 It is proposed that any sale contract to a purchaser will include provision for the purchaser to pay any associated costs incurred by the Landowners (i.e. Landowners Solicitor fees in auditing the planning agreement).
- 14.7 The Landowners will use reasonable endeavours to ensure that any planning agreement contains appropriate phasing provisions to prevent liability being triggered with respect to land falling outstanding any phase being developed, where applicable.

15 Net Sales Proceeds

- 15.1 The Net Sales Proceeds will be calculated as follows:
- 15.2 $\text{Net Sales Proceeds} = \text{Gross Sales Proceeds} - \text{Sales and Marketing Costs} - \text{Legal Costs of Sale}$

16 Distribution of Net Sales Proceeds

- 16.1 The Landowners shall jointly appoint a solicitor (the 'Lead Solicitor') to act on behalf of the Landowners in connection with the disposal of the Property benefitting from a Satisfactory Planning Permission and the Landowners shall authorise the solicitor on receipt of Gross Sales Proceeds following a sale to:
- 16.2 Pay the Landowners' Agents and sales solicitor their respective fees (plus VAT) in connection with the sale
- 16.3 Pay the balance of the Net Sales Proceeds to the Landowners on a 50/50 basis.

17 Term

- 17.1 The Term means an initial period of 5 years from the date of the Agreement and can be extended by mutual agreement of the Landowners.
- 17.2 Once a Satisfactory Planning Permission has been obtained, the Agreement will remain enforceable beyond the initial 5 year period until all the Property is sold and all obligations under the sale contracts have been resolved.

18 Dispute Mechanisms

18.1 Deadlock

The Project Board can vote 3 times on any matter. If they cannot resolve the issue the following happens:

a) If the Planning Application has been submitted, conditional sales executed, and Project Plan approved then the default position is the Landowners must complete the Project Plan.

b) if the Planning Application has not been submitted, no conditional sales executed, and the Project Plan not approved then automatic notice will have been deemed to have been served to terminate the Collaboration Agreement 3 months later and each Landowner must pay their 50% share of the Development Costs. The Project Board vote 3 times on 3 separate occasions, if no consensus on the third vote then if the conditions in a) are pertinent then the PP must be played out to its conclusion. If in b) then the agreement falls 3 months after the last inconclusive vote. The 3 months gives a cooling off period where the parties can come to an agreement if they chose but during that 3 months affairs are put in order and invoices sorted so that at the end of the 3 months the agreement comes to an end.

18.2 Material Breach

If either Landowner is in material breach of the obligations within the Collaboration Agreement, then the Agreement can be terminated by either party serving a Termination Notice on the other party. Such Termination Notice will set out what the alleged breach is and will provide the other party 20 working days to rectify the breach. In the event of a dispute the matter will be referred to an Independent Expert.

- 18.3 All disputes relating to the interpretation of the Collaboration Agreement including any Project Plans that have been approved, will be referred for determination to a Mediator in the first instance and an Arbitrator if mediation is unsuccessful.

19 Retained or Excluded Land

- 19.1 It is accepted that BHPT will include a buffer zone on the eastern boundary of the land it owns to establish the extent of the built form along Barnack Road.
- 19.2 The masterplan will establish the extent of this buffer zone and it will form part of the red line area for the submission of the outline planning application that the Landowners will submit. The master plan will provide for agricultural vehicular access to be provided to the buffer zone so that it can be maintained in the future.
- 19.3 BHPT will retain the freehold ownership of the buffer zone and will be responsible for its future maintenance. However, the costs of providing and setting out the buffer zone will form part of the scheme wide costs and will thus be shared equally between the Landowners. This is on the basis that the buffer will form part of the open space area of the overall site and that it will form an important buffer to Burghley House and its gardens.

20 Ransom Strips

- 20.1 No Ransom Strips are permitted between any part of the land holdings that form the Property.

21 VAT

21.1 The Landowners are to confirm as soon as possible whether they will be electing to charge VAT.

22 Good Faith

22.1 The Landowners shall co-operate, not ransom and act in the utmost good faith in all dealings with each other.

23 Freedom of Information Act (FOIA)

23.1 It is acknowledged that the Council, as a public body, is subject to FOIA. The Collaboration Agreement will not of itself be subject to FOIA, however, information produced or held by the Council or relating to the Council in its capacity as a Party of the Collaboration Agreement may be subject to a FOIA request. Whilst respecting the confidentiality of Collaboration Agreement business, the Council will retain unfettered discretion to consider the extent to which it will be obliged to disclose any Collaboration Agreement information it holds or produces (as a matter of law). The Parties will need to consider how best to safeguard the confidentiality of the Collaboration Agreement business and agree a policy for the circulation of any Collaboration Agreement business information and the management of any FOIA request issued to the Council. Matters of a commercially sensitive nature will need to be treated as Exempt Papers within the Councils governance procedures.

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signed for and on behalf
SKDC

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signed for and on behalf
BLL and BHPT

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date

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date

