

Draft Heads of Terms
for
Transfer of Running Track site at Fuseliers Way, Leamington

Subject to Contract & WCC Cabinet Approval

Date – 18.04.2024

1.0 Seller

Warwickshire County Council (**WCC**)

Shire Hall,
Market Place,
Warwick
CV34 4RL

For the attention of: Mark Evershed
Tel: 07787 957172
Email: markevershed@warwickshire.gov.uk

2.0 Sellers Solicitors

Warwickshire Legal Service (WLS)

Shire Hall,
Market Place,
Warwick
CV34 4RL

For the attention of: Peter Endall
Tel: 01926 412986
Email: peterendall@warwickshire.gov.uk

3.0 Purchaser

Warwick District Council (**WDC**)

Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ

For the attention of: Chris Elliot
Tel: TBC
Email: chris.elliott@warwickdc.gov.uk

4.0 Purchasers Solicitors

TBC

For the attention of: TBC
Tel: TBC
Email: TBC

5.0 Proposal

The Parties are to enter into an Agreement for the acquisition by the Purchaser of the freehold land specified in Clause 6.0 below for the construction of an Athletics track and appurtenant ancillary buildings, Car Parking and Access Road. The Agreement will be subject to the Conditions detailed in clause 10.0 below and be made in accordance with these Heads of Terms.

6.0 Site

The Site (shown outlined in red below for identification purposes only) forms part of Title Number **WK519488**. At the extreme Eastern boundary the land adjoins The Estate Road known as Fusiliers Way and enjoys full rights of access at all times and for all purposes until such times as the Estate Road shall be confirmed as Adopted Public Highway.

The land was originally transferred to WCC by the former Freehold Owner under a S106 Agreement to be used only for Education purposes for which a Restrictive Covenant is in place.

7.0 Price

The land value for the site is £1.

8.0 Deposit

No deposit will be paid on exchange of the Agreement. Once the Conditions have been satisfied or waived the purchase price will be deemed to be paid at completion.

9.0 Development

“The Development” will comprise the laying out of an Athletics track, and any other ancillary buildings and facilities considered strictly appurtenant to such use including car parking together with an Access Road which also provides an additional access to Myton School which adjoins the Western boundary. **NO FURTHER DEVELOPMENT SHALL BE PERMITTED WITHOUT THE PRIOR CONSENT OF THE SELLER.**

10.0 Conditions for Site Acquisition

The following section sets out the conditions precedent that are to be satisfied to acquire the freehold interest in the Site.

These Conditions can be waived in part or full at any time by agreement between the Parties.

1) Planning

- a) The Purchase is subject to receipt of a detailed Planning Consent for The Development (together with any additional signed S106 Agreement that may be required) which shall take effect after the expiry of the Challenge period.
- b) Within 6 months of the date of this signed Agreement The Purchaser shall deliver a detailed Planning application to The Seller for the Seller's Approval (such approval not to be unreasonably withheld or delayed). Within 28 days of the receipt of such Approval, the Purchaser shall formally submit the Application to the LPA Director of Planning.

2) Access to adjoining Land

Within 6 months of the date of the Transfer the Purchaser shall construct at its own expense the Access Road (specification TBC) between points A and B shown on the plan and shall grant full rights of access at all times and for all purposes and at no cost to the Owners for the time being of the Myton School and any successors in Title.

- 3) The Restrictive Covenant mentioned in Clause 6.0 above specifies that the land should only be used for Educational purposes and The Purchaser will indemnify the Seller against any claims or issues resulting from the Purchasers proposed use of the site as defined by Clause 9.0

4) Corporate Approval

WCC Cabinet Approval to enter into this Agreement with the terms as agreed herein

5) Title

The Title being sufficiently clear to enable The Development as proposed to proceed.

6) Surveys

The Purchaser will have the right to undertake any surveys of ground condition, ecology and utilities / services together with sufficient access to undertake these surveys.

7) Miscellaneous

Any other issues arising from Third Party requirements are adequately resolved.

11.0 Planning

In accordance with Clause 10.1(b) above The Purchaser will submit a detailed planning application for the scheme such planning application having been approved by the Seller

The planning condition in Clause 10.1(a) will be considered satisfied on the issue of the Planning Decision Notice, signing of any Section 106 agreement and the expiry of the Challenge Period whichever is the later.

The Challenge Period shall be the time taken for any legal challenge to the award of Planning permission for the Development to be dispensed with.

The Challenge Period condition can be waived at any time by agreement between the Parties.

Both the Purchaser and the Seller shall retain the right to approve the Conditions of the final consented scheme. Such written approval shall be issued by each party within 14 days of the expiry of the Challenge Period.

If both parties agree that the Planning Consent so granted is acceptable the Seller shall serve on the Purchaser 28 days' Notice to complete the Transfer

12.0 Licence

The Parties intend that the Agreement shall implicitly contain licence for the Purchaser and its agents and contractors to be able to enter the Site to undertake Surveys at a time to be agreed with the Seller subject to the submission of any RAMS or other documentation as appropriate.

13.0 Estate Management/Income and Security

The Sellers are responsible for estate management and security of the Site from the date of exchange of Agreement up to completion of the Transfer

14.0 Long Stop Date

The Long Stop Date for the Transfer shall be 2 years from the date of the Agreement.

The Parties may agree to extend the Long Stop Date by a further 12 months if there is a planning appeal or until any challenge has been dispensed with.

15.0 Legal Costs

Each party to be responsible for their own legal costs.

16.0 VAT

The current position as to the VAT Status of the land is being assessed.

Signed For WCC:

Signed For WDC

In response to these proposed Heads of Terms, WDC will reply to the County Council with the following queries –

- We are concerned by paragraph 9 – “**The Development**” will comprise the laying out of an Athletics track, and any other ancillary buildings and facilities considered strictly appurtenant to such use including car parking together with an Access Road which also provides an additional access to Myton School which adjoins the Western boundary. NO FURTHER DEVELOPMENT SHALL BE PERMITTED WITHOUT THE PRIOR CONSENT OF THE SELLER. We intend to use the pavilion at the track for some community activities which may not be “strictly appurtenant to such use”, assuming that “such use” refers to the sport of athletics.
- In paragraph 10.0 1 b) WDC only has 6 months from signing the agreement to prepare the Planning Application for the athletics facility and to submit it to the seller. In paragraph 10.0 2) WDC only has 6 months from the transfer to construct the access road. Both these timescales are restrictive and would be hard to achieve.
- Furthermore, WDC only has 28 days from agreeing the Planning Consent is acceptable to complete the transfer, which may also be challenging for both parties.
- In paragraph 10.0 6) the County are granting access to the site to do some surveys, but there may be others that we need to conduct. We would therefore suggest that the wording should be “to undertake any appropriate survey including, but not restricted to....”