

Office of the Police and Crime Commissioner for Durham

September 2015

Report on Sale of Former HQ Site – Contract Terms



Purpose of report

To update the PCC on the current position regarding the sale of the former Headquarters and to seek approval to the provisionally agreed contract terms.

Background

The former Constabulary headquarters site was marketed for sale ahead of the relocation to the new building and a preferred developer was selected in November 2013 following approval by the PCC.

The site extends to 11 hectares (27.4 acres) and was marketed as two phases. Phase 1 is the largest part of the site and has the benefit of an outline planning permission for 230no residential units. Phase 2 includes the skid pan and grey car park areas. This area is currently allocated as green belt in planning terms, however the draft Durham County Local Plan proposes that phase 2 is allocated for residential development developed for residential purposes. While the Planning Inspector has generally dismissed the Council's proposals to develop upon green belt sites, the Inspector stated that the residential proposal for the phase 2 site should be considered upon application. Durham County Council have asked for the planning inspectors interim report on Durham's proposed Local Plan to be Judicially Reviewed, whilst the outcome of the process is uncertain it is likely that the adoption of the local plan will be delayed.

This report sets out the details of the negotiation process and the provisionally agreed terms for sale to the preferred developer, Persimmon Homes Limited.

The contents of the report are extremely sensitive in commercial terms.

Negotiation Process

Following the selection of the preferred developer in 2013, the parties have worked closely to reach provisional agreement of contract terms. This has involved:

- detailed site investigations involving rotary borehole testing and analysis of the findings
- a tendering exercise for asbestos surveys and analysis of the findings
- a tendering exercise for demolition and analysis of the findings
- further consultations with the local planning authority

RESTRICTED-COMMERCIAL-CONTRACTS

- further ecology surveys and appropriate licence applications to Natural England
- negotiation of complex points within contract documentation

The offer made by the preferred developer in 2013 was subject to a number of assumptions and abnormal cost deductions. Assumptions and the associated abnormal cost deductions could only be clarified following the investigation work outlined above. Deductions have been provisionally agreed on an open book basis in the interests of accountability and to facilitate financial auditing and scrutiny. Some unknowns could still arise once works start on site such as the uncovering of hidden asbestos.

When the site was marketed and the preferred developer selected, it was anticipated that the PCC would arrange and bear the cost of the asbestos removal and demolition of structures on site. However, during the course of negotiations, the developer has offered to undertake these works to both control ecology issues and to manage site levels ready for development works. If this is approved, the costs of asbestos removal and demolition will be deducted from the purchase price as an abnormal cost.

A tendering exercise of the asbestos surveys was conducted on behalf of the PCC and the developer has conducted the tendering exercise for the demolition contract. Both exercises have been carried out on an open book basis where each party have shared documents and findings.

It has been provisionally agreed that the mast relocation will remain the responsibility of the PCC and will be conducted within the programme of demolition. The details of this will be the subject of a separate report to the PCC once details are finalised.

A small team of consultants have supported the internal expertise within the Constabulary's Estate department throughout the process to include:

- GVA (to provide current market advice in the negotiation of detailed terms within the contract documentation)
- Turner and Townsend (to include quantity surveyors analysis of costing data in the negotiation of abnormal cost deductions and project management of the asbestos surveys and proposed mast relocation)
- Ward Hadaway (to provide legal advice and produce documentation)

Proposed Terms of Sale

Contract terms have been provisionally agreed between the parties, essentially based on the offer made by Persimmon in 2013. Given the complex nature of the disposal, the contract documents are large and legally technical. As requested by the PCC's office, a basic Executive Summary of the terms is set out below followed by a more detailed summary of each main term.

Executive Summary

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The freehold of the entire 11 hectares (27.4 acres) will be transferred from the PCC to Persimmon Homes upon completion of the sale contract. Persimmon will pay a £100,000 deposit upon exchange of contract which is deducted from the price upon completion.

The contract documents make reference to 2 phases of land due to the differing level of development certainty attached to each phase. Both phases are to be transferred at the same time however the freehold purchase price will be paid in 6 instalments over a number of years (4 for phase 1 and 2 for phase 2).

For this reason, upon transfer, the PCC will place a legal charge on Persimmon's freehold title and this will be lodged with the Land Registry (much like a mortgage company does for long term home loans). This charge places a number of restrictions and obligations on Persimmon and effectively prevents them from disposing of the freehold title (other than in certain limited circumstances for example for substations) of the land before paying for it. The legal charge will be released proportionally by the PCC each time an instalment payment is made by Persimmon.

The terms relating to each phase are slightly different.

The main points to understand in relation to Phase 1 (the area of the former HQ occupied by buildings) are as follows:

- The PCC obtained outline planning permission for residential development before marketing the site. With this certainty, the market value of this piece of land can therefore be assessed and agreed at contract stage.
- Persimmon made an offer of £18,067,087 for phase 1 subject to reserved matters planning approval and cost deductions for demolition and unknown abnormalities (eg deeper foundations than expected due to ground conditions). This is a fixed base price referred to in the contract documents. The cost deductions have been assessed and agreed as far as possible. £1,586,862.88 is to be deducted for abnormalities and £1,289,080.17 for demolition. These sums are clarified in more detail below. Some further deductions may be made to the price for instance if the council grants full planning consent with further conditions incurring cost or if the demolition process reveals unknown asbestos.
- In their offer, Persimmon had already deducted the fixed £1,619,810 affordable housing payment required by the County Council so no further allowance needs to be taken for this.
- A layout drawing and schedule of house numbers and types will be attached to the contract document committing Persimmon to develop in line with the planning consent.
- Persimmon are contractually bound to submit a planning application for reserved matters within 6 weeks of exchange of contract. If approval is not obtained, (subject to rights/obligations to appeal and extension for delay) the contract can be terminated by either party and the deposit returned. If the application is approved, Persimmon will then complete the contract upon grant of full planning permission (subject to satisfaction of the other conditions, agreement of demolition costs, agreement of the areas to be mortgaged and obtaining the off-site drainage rights which Persimmon needs).

RESTRICTED-COMMERCIAL-CONTRACTS

- The phase 1 price will be paid over 4 instalments, the first payable upon completion of contract (not exchange of contract) and the others after recurring 12 month intervals (subject to delay if the removal of the mast by the PCC is delayed). As each payment is made, the PCC will release a proportion of the charge on the freehold title.
- Persimmon were not willing to agree a provision for overage (ie increase in purchase price if the income per square foot for dwellings exceeds developer's anticipated values) in relation to the development of phase 1. Equally however, if the anticipated value is not achieved and houses sell for less than expected, the base price for phase 1 cannot be renegotiated.

The main points to understand in relation to Phase 2 (the area of the former skid pan and grey car park) are as follows:

- Phase 2 is currently designated green belt and does not have planning consent for development. This means that there is no certainty about its future and the market value of this piece of land can only be assessed based on development assumptions.
- Persimmon made an offer to purchase phase 2 for £8,313,913 based on the assumption that planning permission will be obtained for residential development of 76 dwellings with a target area between 100572-110629 sq ft. This price will be subject to cost deductions for affordable housing provision, s106 obligations and abnormalities. These costs have not been agreed as they cannot be determined at this stage. There is however provision for dispute resolution in relation to costs if they cannot be agreed by the parties at the time.
- A layout drawing and schedule of house numbers and types will be attached to the contract document committing Persimmon to seek approval to develop in line with the base price offer for phase 2.
- Persimmon are contractually bound to support the deletion/removal of phase 2 from the green belt in the local plan and to make representation for the allocation of Phase 2 for residential development.
- If the site is removed from green belt within the local plan and allocated for residential development, then Persimmon have to submit a planning application within 12 months of adoption of the plan.
- If planning permission is obtained (for 76 or more dwellings, for sales area between 100572-110629 sq ft) within these timescales and is in accordance with the agreed layout then the price will be the base price of £8,313,913.00 less the sums in the second bullet point above.
- The contract also provides for scenarios where either only part of the site is removed from green belt and/or allocated for residential development or where none of the site is removed and allocated. In these circumstances, the parties must agree a promotion strategy and review this annually. If residential development becomes unachievable, the parties may also agree to pursue development for an alternative use. This strategy review will continue until the parties agree or an independent planning expert determines that 'there is no realistic prospect' of securing residential or any other development.
- If phase 2 planning permission is obtained after those timescales or for something else (eg office use) then the price will be determined by an open market valuation by an independent Chartered Surveyor in accordance with RICS valuation standards.

RESTRICTED-COMMERCIAL-CONTRACTS

- The phase 2 purchase price is therefore payable depending on when a planning permission (free of challenge) is obtained and the price is determined. If that is achieved within 12 months after the Phase 1 fourth payment then it is payable 50% on that date and 50% 15 months after. If planning permission (free of challenge) is obtained and the price settled more than 12 months after the Phase 1 fourth payment then 50% is payable 20 working days after the later of planning permission or determination of the price and 50% 15 months after that payment.
- The developer has agreed to an overage provision for phase 2 whereby if a further permission is obtained for more than 76 dwellings or more than 110629 sq ft then an additional payment will be made in line with an open market valuation by an independent Chartered Surveyor in accordance with RICS valuation standards (less the price already paid).

It should also be noted that the PCC has an obligation within the contract to remove/relocate the communications mast. This will be mid demolition when access will be possible. There are timescale limitations in relation to this and the PCC must use all reasonable endeavours to carry out the works within 3 months of access being made available.

Finally, if planning permission for Phase 2 is obtained more than 30 years after completion of the sale then Persimmon has no obligation to pay any part of the Phase 2 Price.

Heads of Terms

The provisionally agreed terms can be summarised as follows:

Vendor: The Police and Crime Commissioner for Durham

Purchaser: Persimmon Homes Limited

Site: The property to be sold ('the Site') comprises all that land shown outlined on the attached plan (Appendix 1) measuring approximately 11 hectares (27.4 acres)

'Phase 1' site outlined red on the attached plan is sold with the benefit of outline planning consent for 230 dwellings

'Phase 2' site is outlined blue on the attached plan

Tenure: The site to be disposed of on a Freehold basis

Ph 1 Base Price: At offer stage, a gross purchase price was agreed. The gross purchase price agreed for the 'Phase 1' land is £18,067,087 (eighteen million sixty seven thousand and eighty seven pounds), subject to satisfactory reserved matters planning approval and deductions for agreed abnormal costs (see section entitled "Abnormal Costs"). The known cost of Affordable Housing contribution to the local planning authority was deducted before the gross purchase price was agreed.

RESTRICTED-COMMERCIAL-CONTRACTS

Ph 2 Base Price: The gross purchase price for the Phase 2 land was agreed at offer stage as £8,313,913 (eight million three hundred and thirteen thousand nine hundred and thirteen pounds), subject to securing planning consent for a minimum of 76 dwellings and or a minimum total sqft of 100,572 sqft with deductions for s.106 costs, abnormal planning costs and abnormal costs (see section entitled "Abnormal Costs"). There is an obligation for the purchaser to actively seek pursue this within an application within 12 months of adoption of the new local plan.

If planning permission for Phase 2 is achieved after that (or for another use) then the Phase 2 purchase price shall be based on market value calculated in accordance with RICS valuation definition and methodology.

Phased Payments: The Phase 1 purchase price is to be paid as follows:

25% Net Purchase Price (NPP) on Completion

25% NPP 1st Anniversary of Completion

25% NPP 2nd Anniversary of Completion

25% NPP 3rd Anniversary of Completion

The Phase 2 purchase price is to be paid in two equal instalments starting on the 12 month anniversary of the final phase 1 payment subject to planning permission being obtained.

To secure future phase payments the vendor will retain a charge over the Site which will be proportionate to the outstanding balance of land payment due.

The vendor agrees to release charges in proportion to land receipts received in accordance with an agreed phasing plan (to be appended to contract)

Note – developer requires the ability within the Contract to vary the phasing in agreement with the vendor (not to be unreasonably withheld or delayed) and to allow drainage/services infrastructure to cross a later phase in order to serve a particular phase being purchased

Conditionality: The purchase is conditional upon the following (Phase 1 land only):

- Receipt of satisfactory reserved matters pursuant to the outline planning permission dated 26 October 2012 (Ref: CMA/4/71) for the proposed development which will be deemed satisfactory unless it contains an "unacceptable condition" (list to be agreed between the parties and set out in the contract) ;
- Expiration of the Judicial Review period unchallenged;
- Agreement of demolition costs & asbestos removal

RESTRICTED-COMMERCIAL-CONTRACTS

- Agreement of areas to be charged to secure deferred payment price
- An easement for off site drainage being completed with Durham County Council

With regards to the Phase 2 land, it is not anticipated that the conditions which relate to the payment of the Phase 2 Land price will be satisfied prior to completion.

Phase 2 Land: The Vendor will retain a charge over the Phase 2 land for 30 years or until the purchaser (or their successor in title) secures planning consent for residential development and pays the 'Phase 2' land payment.

The purchaser will be obliged not to object to (and if possible support) the deletion of the Phase 2 Land from the Green Belt in the local plan and/or make representations for the allocation of the Phase 2 Land for residential development. The Purchaser will be obliged to submit a detailed planning application for residential development. The Vendor shall be entitled to approve the planning application (not to be unreasonably withheld or delayed) and be kept regularly informed during the planning process.

On the assumption that the developer achieves a satisfactory planning permission on the Phase 2 land the developer is to pay the phase 2 purchase price in two equal instalments starting on the 12 month anniversary of payment of the final instalment of the Phase 1 Price.

In the event that either only part of the site is removed from green belt and allocated for residential development or where none of the site is removed and allocated, the parties must agree a promotion strategy and review this annually. If residential development becomes unachievable, the parties may also agree to pursue development for an alternative use. This strategy review will continue until the parties agree or an independent planning expert determines that 'there is no realistic prospect' of securing residential or any other development or for up to 30 years

Timescales: A reserved matters application pursuant to the outline permission dated 26 October 2012 (Ref: CMA/4/71) is to be submitted for the 'Phase 1' land following completion of site investigation works and detailed design, with a reserved matters application to be submitted no later than 6 weeks after exchange of contract.

A detailed planning application for the 'Phase 2' land will be submitted as set out above.

Abnormal Costs: The Purchaser has procured all necessary site investigation works and technical studies required to arrive at a net purchase

RESTRICTED-COMMERCIAL-CONTRACTS

price prior to completion. In the event of default by the purchaser or where the purchaser is unable to get a reserved matters application which acceptable (to the vendor) the purchaser will transfer the technical studies to the vendor at nil cost.

The Purchaser has shared the technical studies with the Vendor and the Vendor's agents on an open book basis and the agreed schedule of abnormal cost deductions is set out in appendix 2. This will be appended to the contract. Abnormal Cost deductions have been provisionally agreed in line with the Schedule. The relevant sum is £1,586, 862.88

The Purchaser has agreed to undertake the asbestos removal and demolition of the structures on site. These works have been tendered on an open book basis. The cost of these works will be deducted as an abnormal cost and have been provisionally agreed to be £1,289,080.17. The agreed schedule of costs is detailed within appendix 2

The agreed abnormal costs will be deducted from the purchase price which will be paid in 4 equal instalments.

Further deductions may be made in relation to unknown abnormal costs identified following the demolition of the existing Police HQ over and above those costs agreed to date, including ground remediation, drainage and abnormal foundations. Further deductions will be agreed commensurate and in proportion to the calculations within the agreed schedule to be appended to the contract.

Phase 2 deductions will be agreed following planning application and any planning conditions/s106 requirements. Some deductions made within Phase 1 relating to general infrastructure enable development of Phase 2.

Use: The sites are to be used for the erection of residential dwellings with associated parking, infrastructure and garden facilities and a restrictive covenant to this effect shall be imposed on the Phase 1 Land and the Phase 2 Land in favour of the Vendor.

Financial Position

The negotiation period has been used to produce a detailed understanding of abnormal costs. It would have been possible to complete the sale earlier on the basis of allowing the developer to deduct a large contingency sum for unknown costs of development. Given the size of the site, this would not have presented the most financially prudent or openly auditable means of completing the sale. It is considered that due diligence has been undertaken to establish the costs as far as possible and to provide most certainty. Some unknown cost deductions may still arise during the early construction period and the developer has retained the right to seek further agreement on such matters. Such deductions should hopefully be limited and will however be made against the agreed schedule of abnormal costs and assumptions made.

RESTRICTED-COMMERCIAL-CONTRACTS

It must also be noted that Phase 2 represents greater financial uncertainty. The base purchase price assumes residential development for 76 dwellings however the land is being sold without outline planning permission for this use. The site is within green belt and may not be released in the council's local plan.

In summary, the base prices for each phase are as follows:

Phase 1:

Original Bid	£18,067,087.00
Less	
Grd Abnormal Costs	£1,586,862.88
Demolition costs	<u>£1,289,080.17</u>
Revised sum	<u>£15,191,143.95</u> (subject to further unknown deductions)

Phase 2:

Original Bid	£8,313,913 based on residential PP for 76 units
Less	costs to be determined.

The payment profile for the sale is set out below assuming imminent exchange of contracts, approval of a reserved matters planning application for phase 1, that residential development is secured for phase 2 and that there are no further abnormal cost deductions. If there are further deductions in relation to the demolition contract, it has been provisionally agreed that these will be subtracted from the first and second instalment of the Phase 1 payment for cash flow purposes (if they are ascertained after that they will be deducted later). Any additional site abnormal deductions will be spread across the payment profile.

Completion (estimated November 2015)	Phase 1 1 st Anniversary (estimated November 2016)	Phase 1 2 nd Anniversary (estimated November 2017)	Phase 1 3 rd Anniversary (estimated November 2018)	Phase 2 4 th Anniversary (estimated November 2019)	Phase 2 5 th Anniversary (estimated November 2019)
£2,830,975.86 ie 25% of base price less 25% of known abnormals and 100% of known demolition costs. also possibly subject to further deduction for any agreed unforeseen demolition costs discovered between exchange and completion	£4,120,056.03 ie 25% of base price less 25% of known abnormals and also possibly subject to further deduction for any agreed unforeseen demolition costs discovered between completion and 1 st anniversary	£4,120,056.03 ie 25% of base price less 25% of known abnormals	£4,120,056.03 ie 25% of base price less 25% of known abnormals	50% £4,156,956 subject to PP and deductions	50% £4,156,956 subject to PP and deductions

RESTRICTED-COMMERCIAL-CONTRACTS

Note that across these 4 instalments, it is possible that unforeseen ground abnormal deductions may be agreed between the parties. Such costs are deducted equally from the base price across the instalment periods from the point of agreement.		
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Recommendations

It is recommended that the report is noted and approval given as follows:

- That the provisionally agreed terms are accepted
- That contracts are exchanged as soon as possible

Michael Barton
Chief Constable

Appendix 1: Risks and Implications

Finance: The Assistant Chief Officer confirms that the income stream will be included within the capital budget

Staffing: No specific implications

Equality and Diversity: No specific implications

Accommodation: No specific implications

Crime and Disorder: No specific implications

Human Rights: No specific implications

Children's Act 2004: No specific implications

Stakeholder/Community Engagement: No specific implications

Environment:. No specific implications

Collaboration: No specific implications

Other risks: No specific implications

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