

## **APPENDIX A: CORRESPONDENCE OF APPLICANTS' AGENT TO OFFICERS DATED 10TH JANUARY 2019**

Dear Anna,

Following our emails and telephone conversation on Tuesday, I have been through the CPV report of 7 November and the subsequent email of 26 November again to identify the outstanding concerns. I attach a copy of those two documents for the sake of completeness. I thought it would be helpful to email you to set out the outstanding concerns together with JCB's proposed response to each one (including additional assurances) which I believe demonstrates that they have been addressed.

### **1. Dwelling Construction Costs**

CPV have considered the dwelling construction costs put forward by DGA on behalf of JCB and also by GS on behalf of the Council, both of which are higher than the figure assumed by CPV in the original viability assessment. CPV have concluded that the lower dwelling construction costs put forward by CPV in the original viability assessment should be maintained (see last paragraph on page 4, the 7 November report).

#### **Response:-**

1.1 For the purpose of trying to reach agreement, JCB have used CPV's lower figure for dwelling construction costs in arriving at 2% for the policy compliant scheme ie the least advantageous figure.

1.2 I would also point out that CPV state in the 7 November report that the exact dwelling construction costs will not be known until the reserved matters stage. Notwithstanding this, CPV confirm they are prepared to agree to their original figure for dwelling construction costs being used for the purposes of the viability appraisal at this stage of the planning process – (page 4 of the report).

### **2. Abnormal Foundation Costs**

CPV accept the principle that an allowance should be made in the viability appraisal for abnormal foundation costs. CPV state in the report that GS have raised two issues on the abnormal foundation costs (page 7 of the CPV report).

The first issue is that GS consider the cost of abnormal foundations assumed by DGA of £672,875 could be reduced to £577,376.

The second issue is that GS query the assumption made by DGA that 54 dwellings will require abnormal foundations. CPV point out that the exact number of dwellings will not be known until the reserved matters stage and that the number of dwellings requiring abnormal foundations could be lower and therefore the abnormal foundation costs could be less than £577,376.

#### **Response:-**

2.1 CPV acknowledge at pages 5 and 6 of the report that the rationale for the assumed abnormal foundation costs is based on the Phase 2 ground investigation report undertaken on behalf of JCB. The extracts from that report which are set out on pages 5 and 6 of CPV's report confirm that a piled foundation solution is likely to be required "across approximately 50% of the site". If, as stated in that report, approximately half of the site is likely to require abnormal foundations, then it reasonable to assume that half of the houses proposed in the development will also need abnormal

foundations. That view has also been confirmed by JCB's technical consultants. That being the case, an assumed number of 54 dwellings requiring abnormal foundations must be regarded as a reasonable figure for the appraisal which supports the view that the approach adopted is robust.

2.2 CPV state that the number of dwellings requiring abnormal foundations could be less than 54. Applying that argument on a consistent basis must mean it is just as likely that the number could be more than 54. This however misses the main point set out in the response at 2.1 above namely that in the light of the conclusions of the ground investigation report and the views of JCB's technical consultants, the figure of 54 dwellings can be regarded as robust for the purpose of the appraisal.

2.3 Notwithstanding the above concerns, CPV accept (line 5 of the conclusions of page 8 of the report) that "At the current time a worst case scenario allowance of £577,376 could be applied to the viability appraisal". This comment can only mean that CPV accept that the issue of abnormal foundation costs can be addressed at this stage of the planning process on the basis that that figure is used for abnormal foundation costs. As we have pointed out previously, for the purpose of trying to reach agreement JCB have used the figure of £577,376 in calculating the offered affordable housing provision.

### **3. Maximum number of dwellings**

CPV have raised the fact that the viability appraisal considers 138 dwellings whereas the planning application allows for up to 148 dwellings to come forward. CPV state that it would be possible for an additional 10 dwellings therefore to come forward which could impact on viability issues.

#### **Response:-**

3.1 The reason the figure of 138 dwellings has been tested in the viability appraisal is because this is the maximum number of dwellings considered achievable by the architects for the higher density scheme in accordance with the Council's design standards. You will recall an illustrative layout showing 148 dwellings was originally proposed for the application but as this did not meet the Council's design standards it was replaced by an illustrative layout showing 138 dwellings. It is therefore highly unlikely that a scheme for more than 138 dwellings could come forward on the site and indeed if a policy compliant scheme comes forward, then it is likely to be potentially less than 138 dwellings.

3.2 In any event, JCB are now willing to offer as part of the section 106 heads of terms dealing with affordable housing, an obligation that if a scheme comes forward for more than 138 dwellings, the viability appraisal would be re-run. This approach would address this concern.

### **4. What if the higher density scheme comes forward**

CPV have stated in the email of 26 November that the viability appraisal suggests 2% onsite affordable housing provision for the policy compliant density scheme but that if the original higher density scheme comes forward, then the affordable housing provision could be 8.7% onsite provision (i.e. 12 units) plus an offsite contribution of £680,000. CPV state that JCB have previously promoted the higher density scheme and that given the location of the site there is a greater opportunity for a higher density scheme to come forward.

**Response:-**

4.1 JCB have undertaken extensive market testing and had a number of discussions with development partners/developers in relation to this site. The result of those lengthy discussions is that JCB consider it is highly unlikely that the higher density scheme originally proposed for the site will come forward and that a scheme based on the Council's policy compliant dwelling mix is far more likely to come forward.

4.2 JCB's proposal for affordable housing in the s.106 is:-

(a) to fix the affordable housing at 2% for a policy compliant scheme; or

(b) if the higher density scheme does come forward rather than the policy compliant scheme, to offer a re-appraisal of viability at the reserved matters stage to establish the level of affordable housing for that scheme.

For the policy compliant scheme, CPV accept in the email of 26 November attached that the figure of 2% is justified – see the highlighted section. I would also point out that this percentage is arrived at using CPV's lower figures for dwelling construction costs and abnormal foundation costs (rather than JCB's figures) as well as CPV's model and cashflow figures. This supports the view that it can therefore be considered robust.

In relation to the higher density scheme, the approach at (b) would provide a legally enforceable obligation which would bind both JCB as current landowner and any successors in title. It therefore addresses the concern raised by CPV if the higher density scheme comes forward.

The comments of CPV in the email of 26 November that a developer might pursue a higher density scheme but seek to rely on the 2% affordable housing provision and the only way to avoid this would be to defer the affordable housing to the reserved matters stage are therefore wrong. Any developer would be aware upfront of the affordable housing obligations in the section 106 agreement which would be reviewed by the developer's advisers as part of any due diligence and would understand that if a higher density scheme is to be pursued then there would need to be a further appraisal to establish the affordable housing provision.

**Conclusion**

We consider the responses set out above to the outstanding concerns demonstrate that the approach put forward by JCB is robust and that the level of affordable housing for the policy compliant scheme can and should be determined at this stage of the planning process.

I would be willing to discuss the above further so there are no misunderstandings and to discuss any remaining concerns. I look forward to hearing from you.

Regards

Grant Anderson  
Partner  
Hill Dickinson LLP  
50 Fountain Street, Manchester, M2 2AS