

County : Flintshire
Title Number : CYM516368
Property : Land adjoining Hawthorne Cottage Little Mountain Road
Buckley Flintshire

30TH JANUARY

2013


Recitals

- (A) By a transfer ('the Transfer') dated 2012 and made between the Covenantor and the Payer the freehold interest in the property comprised in the above-numbered title ('the Property') was transferred from the Covenantor to the Payer.
- (B) The parties to the Transfer have agreed that the Payer shall make a payment to the Covenantor in the circumstances set out below.

THIS DEED WITNESSETH as follows:

1 Definitions

In this deed:

- 1.1 'Chargeable Event' means the grant of Planning Permission relating to the whole or part of the Chargeable Property
- 1.2 'Chargeable Property' means the whole or any part of the Property in respect of which Planning Permission has been granted;
- 1.3 
- 1.4 'Disposal' means a transfer of any legal or equitable interest in the Property (or any part of it) whether or not for value or the grant of any lease (other than a lease for a fixed term of less than 7 years) of the whole or any part of the Property;

1.6 'Payment' means a payment calculated in accordance with the following formula:

$$30\% \times (A-B-C)$$

where:

A = the open market value of the freehold interest in the Chargeable Property with the benefit of the relevant Planning Permission with vacant possession and free from encumbrances (other than those subject to which the Property was transferred by the Transfer);

B = the open market value of the freehold interest in the Chargeable Property on the relevant Payment Date with vacant possession and free from encumbrances (other than those subject to which the Property was transferred by the Transfer) on the assumption that the Chargeable Property is currently and will forever after be used for agricultural purposes with no possibility of alternative uses, except that if a Payment has already been made in respect of the Chargeable Property, the planning permission or permission existing at the date of that previous Chargeable Disposal shall be taken into account in later calculations; and

C = any reasonable professional costs and disbursements (and VAT so far as it is irrecoverable by the Payer as input tax) reasonably and necessarily incurred by the Payer by the relevant payment date in obtaining the relevant Planning Permission;

1.7 "Payment Date" means 28 days after the date of the Chargeable Event. Provided the Payers have made the application for Planning Permission themselves and that such application has not been made by the third party beyond the control of the Payers (such third party not being a member of the immediate family of the Payers) and if such Planning Permission is granted to a third party the payment date shall be 28 days after the Payers have entered into a Disposal of the Property. Nothing in this Deed shall allow the Covenantee to make the Payers dispose of the Property provided the Payers do not implement any Planning Permission granted to a third party in respect of the Property;

1.8 'the Period' means the period of forty years from and including the date of this Deed;

1.9 'Planning Permission' means any outline or detailed planning permission granted during the Period, authorising the development of the whole or part of the Property for any non-agricultural purpose but shall not include any planning permission obtained in connection with an Equestrian use or the grant of Planning Permission to the Payer or their children or any of them for the erection of one dwellinghouse on the Chargeable Property-

2 Payment

2.1 Obligation to pay

On any Payment Date the Payer must make the Payment together with any VAT payable thereon to the Covenantee PROVIDED THAT there shall be no obligation to make the Payment more than once in relation to each Planning Permission on each part of the Chargeable Property.

2.2 Interest

If the Payment is not made to the Covenantee on the appropriate payment date, then the Payer must pay interest to the Covenantee on late payment at a rate of 5% per year above the base lending rate of HSBC Bank plc from time to time calculated on the period between the appropriate payment date and the date of actual payment of the Payment and all accrued interest on it.

3 Information

3.1 Copy documents

The Payer must provide the Covenantee with a copy of any document effecting or relating to a Disposal, including a contract for the sale or lease of the Property or any part of it, within 7 days after the date of such document.

3.2 Planning applications

The Payer must, within 14 days after any application for a planning permission has been made, inform the Covenantee of that application and must supply to the

Covenantee a copy of each planning permission granted within 7 days of receiving the same.

3.3 Proposed actions

The Payer must at all times keep the Covenantee fully and promptly informed of any proposal to apply for planning permission and must promptly respond to any requests for information or copy documents from the Covenantee in connection with the application for planning permission or other issue relating to the Property, including any request for confirmation that no application for planning permission has occurred or is anticipated.

4 Continuation of obligations

4.1 Direct covenants

The Payer must not enter into a Disposal without ensuring that the transferee or lessee first enters into a deed of covenant with the Covenantee containing the same obligations and provisions as there are in this Deed including this clause.

4.2 Application of clause 4.1

The provisions of this Deed are to apply to the whole of the Property. The fact that a Payment may have become payable or the fact that a Payment Date may have occurred in respect of part of the Property is not to expressly or impliedly release the balance of the Property from the provisions of this Deed and is not to release the Chargeable Property from the provisions of this Deed should there be further Disposals in relation to the Chargeable Property.

4.3 For the avoidance of doubt no payment shall be made by the Payer to the Covenantee in respect of the grant of the grant of Planning Permission to the Payer or their respective children or any of them for the erection of one dwellinghouse on the Chargeable Property.

5 Security

5.1 Restriction

5.1.1 Forthwith after the date of this Deed the Payer shall apply to the Land Registry by submitting a completed form RX1 or other appropriate Land Registry form to

register a restriction in the form set out in clause 5.1.2 against the title to the Property.

5.1.2 The form of the restriction shall be:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Edward Geoffrey Bellis of Homeleigh Lower Farm Drury Buckley Flintshire or his Conveyancer"

6 Release

6.1 Release of security to permit Disposal

If there is a Disposal of a freehold interest in the Property the Covenantee must release the restriction and if there is a leasehold Disposal the Covenantee must consent to that Disposal, in all cases to the extent necessary only to permit the relevant Disposal in relation to the property the subject of the Disposal, if the Payer:

6.1.1 make the Payment if one is due under the terms of this Deed, together with all interest due in respect of it; and

6.1.2 delivers to the Covenantee a deed of covenant duly executed by the transferee under the Disposal as required by paragraph 4.1 of this Deed; and

6.1.3 takes any necessary steps to maintain or reimpose the relevant form of security on the freehold interest in the land the subject of the Disposal following the Disposal and to impose a new restriction on any leasehold interest created by the Disposal.

6.2 Release of covenants

Subject to full compliance with the terms of this Deed following a Disposal of all interests (including the entire freehold interest) in the whole or part of the Property, the person making the Disposal, and only that person, is to be released from any covenants given under this Deed (in so far as those covenants relate to the relevant part of the Property if less than whole).

6.3 Costs

The Payer must pay the reasonable costs and expenses incurred by the Covenanttee in connection with the consideration for consent to or approval of any Disposal or any documents relating to it or any deed as referred to in paragraph 4.1 of this deed or the releasing and/or re-imposition of any security.

7 Disputes

7.1 Reference to an expert

If any dispute or difference arises between the Payer and the Covenanttee concerning any matter or thing of whatever nature arising out of or in connection with this Deed, including any dispute as to valuation under paragraph 1.6, then either party may refer the dispute or difference to the final decision of a person acting as expert agreed between them or, failing such agreement, appointed on the application of either party to the dispute or difference by the president or vice-president for the time being of the Royal Institution of Chartered Surveyors.

7.2 Costs

The fees and expenses of the expert, including the costs of his appointment, are to be in his award.

7.3 Replacement of the expert

If an expert appointed by the president or vice-president of the Royal Institution of Chartered Surveyors dies, or unduly delays, or becomes unwilling or incapable of acting, or for any other reason fails to make an award, then either party to the dispute or difference may apply to the president or vice-president to discharge the expert and appoint another in his place. If the president or vice-president so decides, he may discharge the expert and appoint another in his place and these provisions are to apply. The procedure is to be repeated as many times as are necessary until there is an award or determination of the dispute or difference.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

