

Example of Diligence Carried Out by H&A

Site Diligence

- Where is the site located and by what name is it to be called?
- Who owns the land, what is their tenure of ownership in the company of operation e.g. Freehold / Leasehold / Commonhold in the UK and what documentation proves ownership
- If there is no guaranteed registered title to land system in the Country of Operation, what documentation proves ownership and how does the buyer know that documentation has not been forged?
- Who owns the neighbouring land i.e. can the owner restrict the use of neighbouring land?
- If the owner is a company, is the company registered in the country of operation and who are the Directors / principal shareholders?

Developer Diligence

- Who is developing the land and what is their relationship to the owner of the land e.g. associate company, wholly owned subsidiary?
- What are the qualifications of the developer to develop and / or relevant experience of the developer?
- Are references from the bank / accountants / lawyers available if required?
- What testimonials are available?
- Is the developer a member of a professional body / association?
- Company search against developer if agent has not undertaken?
- Does the developer have professional indemnity cover?
- Does the developer owe the buyer any duty of care, if so, under what law, common law, statute?

Developer Lawyer Diligence

- Who are the lawyers for the developer?

- Where do they practise and what contact details?
- Are the lawyers reregistered to practise under the Law of the Country of Operation
- What is the name of their professional body?
- Have the lawyers got Professional Indemnity Cover [even though no strict duty of care to the retail buyers]?
- What is the relationship between the lawyers and the developer e.g. family connections ?

Recommended Lawyers in the Country of Operation Diligence

- Who are the recommended lawyers?
- Where do they practise and contact details?
- Are the lawyers reregistered to practise under the Law of the Country of Operation / how can we be sure?
- What is the name of their professional body?
- Have the lawyers got Professional Indemnity Cover / how can we be sure?
- What is the relationship between the lawyers and the developer e.g. family connections?
- Are you sure that there is no conflict of interest?

Location and Future Marketability Diligence

- Is the development in national parkland or land which might be compulsory purchased?
- Are there any known environmental hazards [e.g. earthquake / flooding / landfill sites / industrial hazard] and is it possible to undertake environmental searches in the Country of Operation?
- Is it possible to undertake environmental searches and have any searches been undertaken?
- What infrastructures exist and are planned in terms of transport?

- What is local planning policy re density and use?
- Is there any danger of the location being over developed?
- What are the basic amenities in the area?
- Are all utilities available sufficient to meet the requirements of use?
- Is there any resentment in the area to foreign nationals buying in the area?
- Are there any aspects of the area which might constitute a nuisance e.g. flight paths, military exercise, heavy / light industry?

Project Management Diligence

- Who is the project manager?
- What are the qualifications and experience of the project manager?
- Is the project manager affiliated / a member of any professional body or trade association?
- Does the project manager have professional indemnity insurance?
- What is the duty of care owed by the project manager to the buyer, if any?

Quantity Surveying Diligence

- Who is the QS
- What are the qualifications and experience of the QS
- Is the site engineer affiliated / a member of any professional body or trade association

Planning Diligence

- Who constitutes the planning authority?
- What is the local planning policy?
- Does the development have full unconditional planning consent as opposed to outline only and what evidence is there of this?

- Were there any preconditions relative to trade off between the Local Authority, the developer relative to other land e.g. planning permission provided an amenity area retained for public use?
- Are there any other developments proposed in the area?

Building Control Diligence

- What is the name of the body responsible for planning control?
- Have plans been deposited with and approved by the planning authority and what evidence is there of this?

Roads and pathways 'roads' Diligence

- Are the roads leading to the site private or public?
- If roads private, what documentation regulates their control, are there unfettered rights of way and what is the cost of use?
- If roads public, have the roads been adopted by the appropriate authority and does the charge form part of local community rates?
- What roads are to be constructed and what document governs the use and cost of the roads?
- Is completion of the roads included within the unit prices?

Utilities Diligence

Gas – Is there gas to the site? Are properties separately metered? From what source does it derive and if known, cost per cubic metre? And what agreement governs rights to receive supply?

Water - Is there water to the site, are properties separately metered, from what source does it derive and if known, cost per cubic metre and what agreement governs rights to supply?

Electric - Is there water to the site, are properties separately metered, from what source does it derive and if known, cost per cubic metre and what agreement governs rights to supply?

Heating – How are the properties to be heated /cooled and is this system installed in individual properties or communal?

Telecommunication – What systems are in place for land / terrestrial communications and what agreement governs rights to supply?

Drains and Foul Water Diligence

- Are the drains to the site private or public?
- Is there a cesspit?
- If drains private, what documentation regulates their control, are there unfettered rights and what is the cost of use?
- If drains public, have the roads been adopted by the appropriate authority and does the charge form part of local community rates?

Build Quality Diligence

- Please provide a copy of the site engineers report.
- Do the foundations take account of possible seismic activity notable in the area?
- Relative to structure, is there any third party certification provided?
- Concerning building materials will these comply with minimum standards or laws for the Country of Operation or the supranational union embodying the Country of Operation?

Build Strategy Diligence

- To what extent is the developer reliant on off-plan sales to fund commencement of the development?
- What is the extent of the build in terms of plots and area, and in what phases and estimated time will the development progress?
- What evidence is there that the developer is able to market the entirety of the development within that time scale estimate?
- To what extent will the developer be relying on third party funding
- What would happen to the development if the developer goes broke
- Will staged transaction payments be held in escrow to the buyers order pending build and by whom

- Does the initial deposit take into account agency commission payable in whole or in part?

Contract diligence

- What form will the contract or any pre contract and any respective conditions take?
- Does the contract evidence the draft of the document transferring title and the grants of rights and subjections by which ownership will be governed?

Title Diligence

- What system guarantees ownership to the Site?
- If ownership is not guaranteed or there are encumbrances on ownership, has the owner or developer taken out insurances to cover the possibility of third party claim and are those insurances assignable for the benefit of buyers?

Funding Diligence

- Are there any lenders prepared to assist buyers and who are they?
- Provide basic details of maximum loan to value and other perceived lending criteria.

Insurance Diligence

- Regarding buildings insurance, have any claims been made on any of the properties?
- Is insurance to be provided on a block policy for all the properties on site and recovered as part of maintenance charge or will buyers be required to insure?
- Are there, or are there likely to be, any excesses [i.e. amounts of claim to be paid for first by or exclusions [e.g. earthquake / flood] on insurance?

Security Diligence

- How will site security be maintained during, after development and at what cost?

Management and Residents Association

- Is there a management and /or residents association for the development, how will it be controlled, what rights will the buyers have to take over control

- What ongoing maintenance costs are there and for what purpose?

Letting diligence

- What letting opportunity is there in terms of rental return as against capital cost and what are the peak periods
- Do you have contact details for local letting / managing agents?

Tax Diligence

VAT – What is the current rate of VAT. Is value added tax payable on new builds and is it known if there is any double taxation treaty allowing UK companies to claim back VAT

Income Tax – What are the current standard rates of income tax and is the income generated by letting perceived as investment income, are there any allowances

Corporation Tax – What are the current standard rates of income tax, are there any allowances

Capital Gains Tax – What are the current standard rates of capital gains tax, are there any allowances

Inheritance Tax – What are the current standard rates of Inheritance Tax, are there any allowances

Local Authority Tax – What are the current standard or approximate rates for taxes paid during the ownership of property and are there any exemptions for non owner occupation

Planning Tax – What taxes, if any, are payable by the buyer as a consequence of planning permission to build being granted

Other Tax – What other taxes, if any, need to be considered

Inheritance Law Diligence

- How will the property devolve [be inherited] in the case of ownership by an individual?
- If a person makes a Will, can that devolution be altered?
- How will the property devolve [be inherited] in the case of ownership by a company where a shareholder dies, can that share be gifted by Will?

Legal Consequences of Ownership Diligence

- What Positive Covenants and Obligations are there i.e things the buyer has to do?
- What Restrictive Covenants and Obligations are there i.e. things the buyer is restrained from doing?
- What Rights are Reserved i.e. to the owner of the site?
- What Rights are Granted i.e. by the owner of the site?

Acquisition cost diligence

- In addition to price, negative currency fluctuation and VAT what are the additional costs on acquisition?

Ownership cost diligence

- In addition to tax, maintenance charges, mortgage repayment, insurances, are there any other payments that will need to be made during the cost of ownership?

Future sale cost diligence

- In addition to tax, and assuming a sale by private treaty, are there any other charges payable on sale?

Political diligence

- Is the developer aware of any legislative changes or proposed changes taking place in government at supranational, central or local level which might adversely impact upon the development?