

Brian Sandom
Corporate Director Environment

Andrew Armes
Head of Development & Design

Our Ref: FOI/ENV

Your Ref:

Reply To: Rick Boucher

Direct Line: 01908 252443

E-mail: rick.boucher@milton-keynes.gov.uk

6th March 2006

Re: Freedom of Information Act Request

Further to your Freedom of Information Act request, the Council's response is as follows.

In July 2003, Milton Keynes Council ("the Council") entered into a legal agreement with Commission for the New Towns ("EP"), Inter MK Limited ("the Developer") and Asda Stores Limited ("the Retailer") relating to the development of land in Denbigh Milton Keynes. The "development" provided for in the Agreement comprised:-

- 1 A new multi purpose sports stadium with a seating capacity of at least 25,000 (but not precluding an increase in capacity to 40,000 approx 1455 car parking spaces, a separate arena with a seating capacity of approx 5,000 for sporting events and 6,500 for concerns and otherwise in accordance with a detailed specification drawn up and agreed between the Council and the Developer and which was actually annexed to the Agreement ("the Base Stadium Development").
- 2 Retail premises comprising at least 14,990 m² of gross internal area being the new Asda superstore ("the Primary Enabling Development") together with other "enabling" developments and all associated highway works.

The Agreement also required a number of conditions precedent to be satisfied prior to the commencement of any development designed to secure the actual construction of the new stadium to the agreed specification and thereafter the continuity of football at the new stadium.

The conditions precedent specifically relating to the new stadium were as follows:-

- 1 The obtaining of satisfactory planning permission by the Developer and the Retailer for both the stadium and the foodstore ("the Planning Condition")
- 2 The completion of a Section 106 Agreement required to implement the development which included, inter alia, the obligation on the retailer to construct the new stadium as a condition of securing its planning consent for the new store ("the Planning Agreement Condition")

- 3 The procurement by the Developer of a legally binding commitment from Wimbledon Football Club to relocate its home ground facilities to the new sports stadium and to obtain consent from the Football Association to do so ("the Football Club Condition").
- 4 Completion of a building contract for the construction of the new stadium together with the appointments of all professional advisers required.
- 5 The Developer being able to satisfy EP of the ongoing viability of the Base Stadium Development ("the Business Plan Condition") such 5 year plan to include annual and cyclical costs and revenue sources and identifying commercial ventures and ancillary facilities that needed to be retained long term to support the main objective of securing a Nationally Recognised League Team operating in Milton Keynes being a football team playing in Pyramid Level 6 or above as prescribed by the FA.
- 6 Similarly, the Developer satisfying EP that the physical construction of the Base Stadium development is capable of being delivered to timetable and budget.

Once these various conditions precedent were satisfied the Agreement then provided that subject to the new stadium achieving the agreed specification and the necessary licence from the Football Licensing Authority EP and the Council will transfer their respective freehold interests in the site of the new Stadium to either the Developer itself or another company which may be formed by the Developer (and approved by EP acting reasonably) for the purpose of taking the transfer of the freehold of the Base Stadium Development. This Transfer will contain a restriction such that in the event Pyramid 6 football ceases to be played at the Stadium for a continuous period of 2 years then the freehold interest in the Stadium will be transferred back to the Council for a nominal £1 consideration. This restriction will be registered against the title to the Stadium and as such, will be binding on the Developer and any successors in title to the Stadium.

The Agreement also provided that on the realisation by the Developer (or any associated company of the Developer) of any proceeds or capital receipts arising from any disposal or development of any of the "enabling" development sites EP and the Council would receive fixed sums being the market value of their respective interests in the Stadium site and a fixed % of any overage which may be available, the % again being based on the parties respective land ownership interests in the development site.

Before any overage payments are made the Developer is entitled to be reimbursed all sums reasonably and properly incurred by the Developer in satisfying the various conditions precedent however the Agreement specifically provides that such costs recoverable by the Developer must exclude any costs incurred in the day to day operation of the Football Club as a going concern.

These obligations regarding the distribution of any proceeds or capital receipts and the payment of any overage are binding on the Developer and any associated company or other third party so even if the Developer disposed of its interest in the new stadium site any successor in title would still be bound by the same obligations.

The Agreement also contained a general obligation on the Developer in respect of proposals for any element of the overall development prior to the payment of any overage not to enter into any transactions with any third party the sole or principle purpose of which or the effect of which may be materially to diminish the operation of the overage mechanism in the Agreement or to materially diminish the amount of any overage sum to which the parties would otherwise have been entitled.

Similarly, any "development costs" to be taken into account in calculating any overage payments due are to specifically exclude any costs or expenditure attributable to the acquisition of Wimbledon Football Club from the administrators and its relocation to Milton Keynes .

Following the satisfaction of the various conditions precedent there is also a specific obligation on the Developer to take all necessary steps at it sole cost to satisfy the current requirements of the Football Licensing Authority needed to procure the issue by the FLA of the initial licence authorising the operation and use of the Base Stadium Development.

With regard to information or agreements between the Council and any of the above companies relating to the operations of the MK Dons training facility at Woughton on the Green, there is no agreement between the Council and any of the companies you have referred to. Any arrangements that do exist will be between MK Dons and Milton Keynes Sports Club and the Council does not have any information with regard to these.

You have the right to appeal against the way I have dealt with your request for information under the Freedom of Information Act 2000. If you wish to appeal please set out in writing your grounds of appeal and return to me.

You also have the right of appeal to the Information Commissioner at:-

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone : 01625 545700
www.informationcommissioner.gov.uk

Yours sincerely,

Mr Peter Smettem
Valuer to the Council

This response was previously provided by Mr Smettem, but signed in his absence.