



Our Ref: 1823477/SP

Date: 09 July 2020

Mr Aluko
31, Langdale Road
Wavertree
L15 3LA

Dear Mr Aluko

Complaint Ref: 1823477
Property and Asset Management Stage 2 Response

Summary

Having investigated your complaint I can inform you that I am satisfied that the Property and Asset Management Service followed the correct procedure in the management of your case. The individual Council Officers involved were reasonable, understanding and supportive. The Council wanted the development to progress and had taken actions such as extending the original long stop dates by Deed of Variation (additional time for signing this Deed was also granted) to support this and give you sufficient time to carry out your development.

I am satisfied that Pauline Ivany's Stage 1 response addressed aspects of your complaint.

I therefore do not uphold your complaint and am unable to offer you the compensation you have asked for.

Complaint

In response to your Stage 2 complaint about how Property and Asset Management dealt with and managed various aspects of land acquisition and development by Community Interest Company (CIC), Community Asset Revival (CAR). I wrote to you on 12 June 2020 to confirm the scope of your complaint and areas of concern.

You added to the scope of your original complaint and I confirmed the full and final summary of your complaint on 17 June 2020 as:

1. You are unhappy about how Property and Asset Management dealt with and managed various aspects of land acquisition and development by Community Interest Company, Community Asset Revival (CAR). You state that:

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- You believe the Council wilfully and in full knowledge of the need to change the company status (to enable a partnership with a developer) denied Community Asset Revival (CAR) Community Interest Company (CIC) to progress with a viable scheme because the company status had to be changed to a private limited company.
 - The Council did not give a reason for the refusal of the change of company status to a private limited company.
 - It was unreasonable and unjustifiable for the Council to withhold consent to change the company status.
 - The letter outlining the reason for withholding consent to change the company to your solicitor was not made available.
 - The Council took too long. That delays by the Council amounted to 53 weeks.
 - CAR CIC was entitled to another nine months beyond the date on which the Option Agreement was terminated.
 - The Council's actions sabotaged CAR CIC's attempt to develop property for social good particularly for the elderly.
2. You state that the impact on you is the loss of tens of 1000's of pounds in time, fees and potential profits.
3. Your expectations are:
- That the Council repays in full all of the planning and legal fees paid to the Council. That you are compensated for all the legal and architectural fees, expenses and disbursements incurred and or payable by CAR CIC or yourself.
 - You seek compensation from the Council in relation to loss of potential profits from the approved development submitted and indeed, alternative designs that would have been submitted. This includes the uplift in the value of the land as first agreed with Cobalt Housing.
 - You seek compensation for the stress, inconvenience and time involved in dealing with this matter prior to and since lodging this complaint.
 - You seek acknowledgement and redress for your claim to have suffered what you perceive as institutional racism. You state this was previously mentioned in written communication with PAMs, in the meeting with Louise Ellman MP and in the formal complaint and was ignored and dismissed as unacceptable.
 - You want to be restored to the position you would have been in had the delays not occurred and the option unfairly terminated.

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Investigation

I have now undertaken my investigation. As part of my investigation I have interviewed Pauline Ivany, (Team Leader, Property and Asset Management Services), Paula Hobbs, (Surveyor, Property and Asset Management Services), John Hayes, (Planning Team Leader, North) and Brian Beattie, (Senior Legal Assistant, Legal Services). I also reviewed the correspondence and complaint file relating to the Stage 1 complaint and the Property and Asset Management Case File.

My findings are based upon the factual evidence and the information available to me and are as follows:

Findings

- Company Status Change

You believe the Council wilfully and in full knowledge of the need to change the company status (to enable a partnership with a developer) denied Community Asset Revival (CAR) Community Interest Company (CIC) to progress with a viable scheme because the company status had to be changed to a private limited company.

Community Asset Revival entered into the Option Agreement, as a Community Interest Company with a full awareness of its responsibilities and obligations under the terms of the Option Agreement and Deed of Variation.

The status of Community Asset Revival as a Community Interest Company, whereby the assets would benefit the community was, in fact, an important consideration for the Council. Changing the Company status from a Community Interest Company to a Private Limited Company enabling the engagement of a third party development partner would have meant that the preferential terms agreed would benefit the private limited company.

The Option Agreement specifically prohibits assignment of the benefit of the option to another party:

Clause 1.1 of the Option: "The grant of the Option is personal to the Developer. The Developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any part of it."

This provision was agreed by you when the Option was completed. To reflect the favourable terms resulting from CIC status, clause 1 of the option is clear. There was no obligation on the Council to depart from its terms. The proposed introduction of a commercial enterprise model fundamentally would have changed the dynamics of the agreed deal and thus the Council was entitled to reject them.

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I am satisfied that this was explained to you in the meeting with Louise Ellman and that Pauline Ivany's Stage 1 response to you fully addresses this aspect of your complaint.

I find that the Council has not wilfully denied you the ability to progress with a viable scheme due to the company status and do not uphold this aspect of your complaint.

The Council did not give a reason for the refusal of the change of company status to a private limited company.

Community Interest Company status means that your company has an asset lock, whereby the assets are used for the benefit of the community. It was on this basis the Council agreed to favourable and preferential terms. I am satisfied that Pauline Ivany's Stage 1 response to you fully addresses this aspect of your complaint.

The original proposal was viewed on a Community Interest Company asset lock basis. The Council is not legally obliged to offer a reason or to justify its decision. I do not uphold this aspect of your complaint.

It was unreasonable and unjustifiable for the Council to withhold consent to change the company status.

The Property and Asset Management Service gave preferential and favourable terms to the Community Asset Revival bid because of the CIC status. It was a key aspect of the transaction and was of critical importance to the Council. The proposed plc status could have undermined the original ethos of the deal with the community benefit element being at risk. You and your legal team were fully aware of the terms of the Option Agreement.

You confirmed by email on 20 August 2018, that you had a potential partner who was comfortable with you remaining as a CIC. Paula Hobbs contacted you on 24 August 2018, to ascertain your requirement for change in company status. In your reply of the same day, company status was not mentioned or confirmed in your response.

I find that the Council did not withhold consent to change the company status. The individual Council Officers involved were in fact reasonable, understanding and supportive. The Council wanted the development to progress and had taken actions such as extending the original long stop dates by Deed of Variation (additional time for signing this Deed was also granted) to support this and give you sufficient time to carry out your development.

I do not uphold this aspect of your complaint. I am satisfied that Pauline Ivany's Stage 1 response to you addresses this aspect of your complaint.

The letter outlining the reason for withholding consent to change the company to your solicitor was not made available.

The response to your Stage 1 complaint from Pauline Ivany explained that there was no documented evidence on file of any communication between the City Council and your solicitor in reference to the change of company status. This response fully addresses this aspect of your complaint.

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➤ Response Time and Delays

The Council took too long. That delays by the Council amounted to 53 weeks.

There were a number of parties involved in this case. Legal Services, Planning and Property and Asset Management from the City Council and Community Asset Revival including your legal representatives and company representatives.

The request to change company status, withdrawal of the initial planning application, changes to your legal representation and resource availability by both parties impacted on deadlines and inevitably led to delays. This is not unusual in such a case.

I do not find the Council wholly responsible for any delays. Individual Council Officers endeavoured to help with ensuring deadlines were met examples include planning officers agreeing to pre-application discussions and Paula Hobbs seeking clarification on company status changes and being in regular dialogue with you.

CAR CIC was entitled to another nine months beyond the date on which the Option Agreement was terminated.

This is correct assuming none of the covenants under the Option Agreement had not been breached. However the CAR did breach the same. The Council was entitled to terminate the option on breach of any of the terms of the option. Clause 19 of the Option provides:

19 Without affecting any other right or remedy available to it, the Owner (the Council) may terminate this agreement with immediate effect by giving notice to the Developer (the Company) if any of the following events occur:

- (a) The Developer is in breach of any of its obligations in this agreement and*
- (n) notwithstanding earlier provisions if the Developer fails to adhere to the Long Stop Dates*

The Council could have terminated the Option Agreement earlier on the basis of the original long stop dates as contained in the Option Agreement. However the Property and Asset Management Service agreed to change the dates by a Deed of Variation. This was enacted to give your company additional time beyond the terms of the original deal. When the original deadline for completion of the Deed of Variation was missed, your Company was permitted extra time for completion. All of this indicates the Councils commitment to assisting your Company and your proposed development.

On this basis I cannot uphold your claim for another nine months beyond the date on which the Option was terminated.

The Council's actions sabotaged CAR CIC's attempt to develop property for social good particularly for the elderly.

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I do not uphold that the Council's actions sabotaged CAR CIC's attempt to develop property for social good particularly for the elderly.

The Council was keen to support you, as a Community Interest Company succeed in a development which would benefit the community. The Council looked favourably and supported your Company from the start of the case.

If your own covenants under the Option Agreement had been adhered to then the Council would not have been able to terminate the Option. Unfortunately your Company did not keep to the agreed timetable for the development. Similarly if your company adhered to its own covenants the Council was then legally bound by the terms of the Option to grant a lease of the property to your Company. The Council was only able to terminate the Option because of your Company's default.

Compensation and Redress

I have considered your request that:

- The Council repays in full all of the planning and legal fees paid to the Council. That you are compensated for all the legal and architectural fees, expenses and disbursements incurred and or payable by CAR CIC or yourself.

I can confirm that such fees are not legally repayable as they are paid for services which have been provided.

- You are compensated from the Council in relation to loss of potential profits from the approved development submitted and indeed, alternative designs that would have been submitted. This includes the uplift in the value of the land as first agreed with Cobalt Housing.

My understanding is that a CIC status limits any potential profits. I am satisfied that the Council did not act in breach of contract and therefore cannot uphold your claim for compensation.

- You are compensated for the stress, inconvenience and time involved in dealing with this matter prior to and since lodging this complaint.

I apologise for any stress or inconvenience you have experienced prior to and since lodging this complaint. The Option was terminated due to your Company breaching its own covenants I therefore cannot uphold your claim for compensation.

- You want to be restored to the position you would have been in had the delays not occurred and the option unfairly terminated.

I cannot uphold your request. The Option was terminated based on your company breaching its own covenants and cannot now be resurrected.

- You seek acknowledgement and redress for your claim to have suffered what you perceive as institutional racism. You state this was previously mentioned in written

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communication with PAMs, in the meeting with Louise Ellman MP and in the formal complaint and was ignored and dismissed as unacceptable.

Upon investigating this complaint, reviewing case files and interviewing key Council Officers involved I can confirm that this case has been managed in line with Liverpool City Council's policies and procedures. These policies and procedures are covered by and assessed against our own equality and inclusion policy and statement, as well as against relevant legal duties.

I understand in your meeting with Louise Ellman she specifically asked you whether you had suffered any form of racism from the Council or its officers and you confirmed that you had not suffered any such abuse.

Throughout this investigation I have found no evidence of you or your company being unfairly discriminated upon the grounds of race.

Following my investigation I am satisfied that the correct procedures for handling your complaint have been followed.

I consider the Stage 1 response to you to be correct. This concludes the final stage of Liverpool City Council's Have Your Say procedure. I hope this answers your concerns.

If you remain unhappy, you have a right to refer your complaint to the Local Government and Social Care Ombudsman. You can contact the Ombudsman at:

Web: lgo.org.uk

Telephone: 0300 061 0614

Opening hours

Monday to Friday: 10am to 4pm (except public holidays)

Yours sincerely

Sarah Parr
Divisional Manager Customer Access

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