

# Havering ChangeUp

## ACQUIRING A PROPERTY - PART I

### Factors to consider before and whilst negotiating a property deal

#### 1. What is your bargaining position?

- What is the current market price for that type of property in that location? In other words, you should do your research.
- Are you able to offer particular attractive terms that would encourage the landowner to deal with you and/or are you a "desirable" purchaser / tenant, e.g. will charitable status or your track record be relevant?
- Who is in more of a hurry to conclude the deal? If the landowner is in a hurry, you may be able to extract valuable concessions.
- Which of you is more bloody-minded, relaxed, risk-averse etc? Understanding the mindset of the other party can be important.

- Does the landowner have to do a deal with you? If so, you can probably extract valuable concessions. If not, be careful how far you push them.
- Has either party invested time, money or reputation on the successful completion of the deal? Be careful how committed you allow yourselves to be before the deal is legally concluded. If one party knows that the other party "has" to do the deal this will massively affect the balance of power.
- Is the other party funding you? If so, you may have to tread very carefully.
- Is there a political route to putting pressure on the other party? Do not be afraid to use this if **necessary**, but it may need to be done with sensitivity.

## 2. Positive negotiation

- Factor in all of the points in 1 above.
- Consider yourself an equal partner in negotiations. Try not to allow yourself to be intimidated by a local authority or other large landowner telling you (for example) that something is "non-negotiable".

- Look into the mind of the other party to work out what they need. You may be able to make a concession which is very valuable to them but is relatively unimportant to you, in return for extracting an important concession from them.
- Play your cards close to your chest. If for example it is obvious to the other party that you are desperate to do the deal there will be no incentive for them to make any concessions.
- Do not announce a grand opening before the deal is signed!
- Adopt a constructive and reasonable "can do" approach. Often it is counter-productive to be overly aggressive and it can be a sign of weakness, not strength.

### **3. The importance of agreeing basic terms in advance**

- It leads to greater clarity.
- A failure to clarify things at outset can lead to terminal falling-out later. The parties may have made radically different assumptions about key issues, and it is likely to be harder to reconcile the differences the later they become apparent.

- Agreeing basic terms means that potential deal breakers can be identified at the outset. Some deals are just not meant to be; it is better to know this before wasting time and money on them.
- Clarity should lead to the deal being concluded with greater speed, as both the parties and their advisers will know roughly what they are supposed to be doing.
- Time will then be spent talking about the right things.
- Clarity should lead to a better relationship with legal and other advisers.
- The whole process will be less of a fog for you if you have established some basic parameters.
- Agreeing the basics should reduce legal costs. Clarifying what is (or is not) in their respective clients' minds can be a very time-consuming process for lawyers.

#### 4. Why does everything take so long?

- If you do not know what is happening or why nothing appears to be happening, ask your legal (or other) advisers, although if the ball is in their court they should be telling you without your having to ask. If they do not know either then there is a problem.
- Bear in mind that speed is often not controlled by legal advisers. Make sure that you understand the process.
- Multiple parties can seriously delay things. If for example you are taking a sublease, you will have to deal with your immediate landlord **and** the freeholder. Usually (in such a situation) there is little incentive for the freeholder to act quickly.
- Legal advisers pick up vibes from how quickly their client responds. So if you want things turned around fast you need to respond promptly (and constructively) when they ask you something.

#### 5. Why and at what stage to seek legal advice

- Cost/benefit analysis - lawyers generally charge fees (some more than others), so you have to weigh

up, with their help, what level of input it is appropriate to obtain from them.

- A small amount of good advice tends to be more valuable than a large amount of bad advice. Are you comfortable that you are getting practical, decent advice?
- Good advice can lead to financial savings and avoidance of practical pitfalls (i.e. it's more than just "sorting out the legals").
- Charity trustees must act prudently - this includes taking appropriate advice and even listening to it!
- Legal advisers can give valuable input into "Heads of Terms" (i.e. the summary of basic commercial terms that the parties should agree at the outset).

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