



# ASSET

## THE BURY ST EDMUNDS CATTLE MARKET REDEVELOPMENT

THE SOLICITOR'S STORY

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## THE SOLICITOR'S STORY

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### INTRODUCTION

Bury St Edmunds Cattle Market redevelopment - the Solicitor's Story, is a hotchpotch of lessons from the path to enlightenment. This is not a story in the chronological sense. It does not follow a strict path to enlightenment. Rather, it dips in and out of a pot of experiences, producing little tidbits that might entertain, or even teach a little.

### FIVE DATES

#### AND AN EARLY LESSON

The crucial dates in question are

- **4th December 2001**  
first meeting with developer's lawyers
- **4th June 2003**  
first development agreement signed
- **3rd June 2004**  
first meeting with developer's lawyers (round 2)
- **10th March 2005**  
second development agreement signed
- **11th May 2006**  
first variation completed

From those dates you see that:

1. It took eighteen months to negotiate and complete the first development agreement;
2. The first development agreement lasted about twelve months before it became clear it was superseded;
3. It took nine months to negotiate and complete the second development agreement;
4. The second development agreement managed to stagger along for about fourteen months before it was necessary to vary it.

## LESSON 1:

### SET OUT AS YOU MEAN TO GO ON

#### The commitment conundrum

Why were there two development agreements? Well, it's all about the age-old conundrum that centres on the balance of commitment. There comes a stage in every development when the developer is not prepared to commit more resources without some legally binding commitment from the Council.

The key question, of course, is "When should the parties commit?". Commit too early and you run the risk that key aspects of the development are not sufficiently well established to reduce satisfactorily to writing. Commit too late and you may not have a developer.

#### The fallibility of sticking plaster

Actually, the real question is not "When should the parties commit?" but "When and how should the parties commit?". There are, of course, what I call "sticking plaster answers" to the commitment conundrum. However, you know the problem with sticking plaster - it tends to curl up at the edges and then come completely unstuck! The answers to the early commitment problem are just like that.

Firstly, dismiss the idea of an option granted to the developer. You cannot grant an option until you know what it's an option for. In other words, you have to settle your development agreement before you could grant the option. This rather defeats the aim of providing early succour to a timorous developer.

Rather more effective sticking plaster may be provided in the form of an exclusivity agreement with the developer, to provide some comfort while you settle the detail that is requisite to enable a full development agreement to be drafted. We did try for an exclusivity agreement in 2001 but the idea was discarded in favour of a communal dive straight into a rather empty swimming pool. The result, of course, was the first development agreement and a number of headaches.

## LESSON 2:

### EAT A GOOD BREAKFAST

#### The marathon

Negotiating any complex development agreement is, to continue with the sporting analogies for a moment, a marathon. You will have meetings at all hours of the day and night, and for unpredictable durations. A flood of unpleasantly complex paperwork will be circulated, with pressing notes requiring you to digest it at extremely short notice. The feast of paper will not be matched by the availability of gourmet cuisine. You will become more used than you would wish to lawyers' sandwiches, both edible and metaphorical.

In the nine months during which we negotiated the second development agreement the overall structure of the transaction changed completely, twice, and provision was made for inclusion of a major new parcel of land (which neither party owned).

## LESSON 3:

### FOOD FOR THOUGHT: SOME STATISTICS

Let me give you some idea of the extent of the changes between 2003 and 2005, and the work this involved. The 2003 agreement contained 99 pages, 6 schedules, 12 attachments (4 principal legal documents) and a guide of 44 pages. The 2006 agreement comprised 126 pages, 8 schedules, 22 attachments (10 principal legal documents) and a guide of 70 pages.

That the client guide to the documentation increased by 59% although the length of the development agreement increased by "only" 25% will give you some idea of the additional complexity.

As to the work involved during that rather intensive nine-month period between June 2004 and March 2005 (compared to the 18 months for the 2003 agreement), just consider that the time taken up by meetings was 206 hours (in 2003 - 29 hours) and drafting, amending and checking documents took 522 hours (in 2003 - 72 hours). Time spent eating legal sandwiches is unrecorded.

What is fascinating, to me at least, is that the proportion of meeting time to drafting time is remarkably similar in both cases. For the 2005 agreement meetings represented about 40% of the combined meeting/drafting time and for the 2003 agreement that figure was 39%.

Settling any development agreement is a marathon and you must have a genuine appetite for it. More seriously, when you are contemplating any significant development

agreement you have to consider how you will handle it and whether you will be able to cope with its demands; hence the next lesson.

## LESSON 4:

### BUY A STRONG BRIEFCASE

#### The prevalence of paper

The 2005 development agreement went through 24 drafts and several of the ten principal supplemental legal documents (a number of them as long as 50 or 60 pages) went through at least 10 drafts.

Bear in mind that for any one meeting you might need, for each document under discussion the current draft (say 60 pages); a previous version with red line changes (say 85 pages); and a guide to outstanding points to be discussed (say 10 pages). So to discuss just that one document you need to bring along 155 pages altogether and you do tend to start to wonder whether the old briefcase is strong enough!

There's another problem with documents like these. There invariably comes a stage when you can't work on screen any longer (and that equally applies, I can assure you, to lawyers drafting a document or considering an amended version of it). You can only do so much on screen before you must take refuge in the unmatched ability to flip through pages, and to jump from page to page, using a printed copy.

#### Prolong life, save trees; learn to duplex!

Now your lawyer may be working at the cutting edge of IT and you may receive all sorts of wonderful compared versions of key documents by email. But this does begin to mean having to harvest entire forests in order to print copies for meetings and for circulation to officers and members. I offer you a small tip designed to enhance the quality of your life and to save forests. Learn how to duplex, or, in non-technical terms, to print on both sides of the paper. I am constantly amazed at the number of long documents I receive printed single-sided. The days when you need to give someone space to make hand-written amendments are surely long past. I can only conclude that the monopolistic dominance of MS Word, with its wonderful ability to allow you to do everything only as it wants you to do things, has substantially contributed to the profitability of the paper industry.

FIGURE 1

## FOOD FOR THOUGHT: - SOME STATISTICS

	2003 AGREEMENT	2005 AGREEMENT
Pages	99 pages	126 pages
Schedules	6 schedules	8 schedules
Attachments	12 attachments	22 attachments
Principal legal documents	4 documents	10 documents
Guide	44 pages	70 pages
Meetings	29 hours	206 hours
Drafting, amending & checking documents	72 hours	522 hours
Eating legal sandwiches	(not recorded)	
Extricating from legal sandwiches	(see "Meetings" above)	

## LESSON 5:

### WORK WITH A GOOD LION-TAMER

#### Taming The Beast

If you wrestle with it long enough you can tame the Beast and make the Beast produce work in a helpful format. I am talking here, of course, not of your lawyer but of MS Word. But, primarily, it is the lawyers who have to tame the Beast.

It should be a criminal offence, punishable by imprisonment at the very least, for anyone to produce a legal document more than five pages long, which has no automatically generated table of contents. The table of contents is one of the crutches that support you as you hobble through any reasonably long document. There are others. Firstly in documents with schedules make sure you get schedule headings ("schedule 1", "schedule 2", etc.) on each page of the relevant schedule so that you can see instantly where you are in the document. And secondly we practice English law so make sure you get a lawyer who speaks English! I hope the days are past when anyone had to read through endless legal prose, unbroken by punctuation or paragraphs. Good layout, automatic paragraph numbering and automatic cross-references help preserve the sanity of the reader.

#### Value added IT—the weapon of the ringmaster

There is a lot that can be done with IT to ease the Solicitor's path. For example, the sensible use of email can be a godsend; but the automatic use of "reply to all" on every

occasion is not. Tables of outstanding issues, with columns for comments and action responsibility, updated from meeting to meeting, are invaluable in keeping track. Properly prepared comparisons between a current draft and the previous version are essential. And if you do not end up with a proper guide to the transaction in cases as complex as these, ask why.

## LESSON 6:

### SHUN THE LURE OF THE LORELEI

#### The siren call to deviation

Lorelei, as you well know, threw herself headlong into the River Rhine in despair over a faithless lover. Upon her death she was transformed into a siren and could from that time be heard singing on the rock that bears her name. Her hypnotic music lured sailors to their death.

This little drama serves to introduce two thoughts. Firstly, the less well-formed the concept of the development is at the start of the negotiations the more prolonged and painful will be the negotiations; and secondly, the more flexibility you try to build into the development agreement the more demanding will be the drafting, and the discussions of it.

#### Chart your route

The more you can initially identify what is to be built, and hence the less you need to cater for fundamental deviations

through treacherous waters, the more likely it is that you will arrive sane and safe at the end of the journey.

In practical terms that translates into firm advice to identify the scope of the development at the start and to identify and then reduce to a bare minimum the circumstances in which any fundamental changes to that scope might be needed.

## LESSON 7:

### BE(K)NIGHTED SINNERS AND SAINTS

#### (The beatification of Betty)

##### Curses and Saints

Your pilgrimage to development salvation will also throw together a number of disparate personalities. The interactions between them are expected to generate a lasting, workable development agreement.

There is much travail along the path to completion of a development agreement. I have referred to a number of them already. It is clear to me that it is insufficient merely to have a client whose name includes the word "Saint". If you are going to make real progress you also need a working team that includes some good candidates for beatification.

I cannot overemphasise the significance of finding people who can work together. It is a truism, and something over which you may have little control, but it makes a huge difference to the success of the project.

### Sanity

How the personalities involved interact will determine, to a larger extent than you might imagine the success of your project and the mood of the marathon. That may sound a little over-dramatic. I suspect it is an area people do not commonly consider. After all, the developer and the professional team are not usually chosen primarily on the grounds of their personalities.

But given that you will to spend hours cooped up negotiating tendentious, and frequently, highly technical, points it is a good idea to think a little, at the start, about the people who are going to be involved - and their respective abilities.

## CONCLUSION

### THE END IN SIGHT!

Every development is different. Every person has a different personality. Perhaps, in reading this paper, you will have found one or two useful pointers that might be helpful if you ever plan to embark on a similar journey.

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