



Due Diligence Helps Saves £10m On £46m Deal

Clowes Developments (UK) Ltd was founded more than 40 years ago by the chairman, Charles Clowes, and since then has expanded to become one of the largest privately run property development companies in the UK.

The company boasts a mixed use portfolio, consisting of commercial property and private housing, and operates nationally in all sectors of the market.

THE CHALLENGE

In one of the largest property deals of the year, Flint Bishop was instructed by Clowes Developments (UK) Ltd to acquire a portfolio of nine development sites from Wilson Bowden Developments. The portfolio consisted of almost five million sq ft of commercial property spread over approximately 300 acres of land.

The deal was a highly sensitive one and if news of the proposed purchase had been made public it could have led to the entire transaction being aborted, with significant consequences for both parties.

Adding to the complexity of the deal was the fact that several sites were in construction and subject to on-going contractual arrangements; for example, existing infrastructure agreements with Network Rail for the installation of a rail freight terminal.

And on top of all this, the deal needed to complete in just five weeks.

LOCATION
MIDLANDS

SCHEME
COMMERCIAL
PROPERTY

VALUE
£46 million

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FLINT BISHOP'S APPROACH

Project management

Ian Beardmore, Flint Bishop's senior partner and head of commercial property, chose not to carry out any legal work on the transaction; instead he took the role of lead partner on the project, producing a detailed project plan to ensure the smooth delivery of the transaction and effectively "project managing" the various teams to ensure that tasks were completed at the right time and in the right manner.

And in a very unusual step, the project team, which consisted of 10 lawyers from Flint Bishop's commercial property and construction departments, literally 'moved in' together - occupying the same office space during the course of the project.

The due diligence process was far from straightforward due to complexities surrounding a number of the sites. In order to manage this effectively, each member of the team was given a number of properties to review. In addition, reporting on the due diligence process was led by one single partner to enable a consistent line of communication between the firm, the client and the vendor's solicitors.

Technical expertise

The contractual negotiations were particularly difficult as Wilson Bowden's initial position was that Clowes Developments were expected to acquire the portfolio subject to the legal defects identified by the property team, a number of which affected the value of the portfolio. This meant that our due diligence exercise would be vital in terms of helping our client understand the risks it was taking on and perhaps even enable our client to renegotiate on the commercial terms.

Overall, Flint Bishop provided advice covering construction, environmental, planning and property issues.

Each site was the subject of planning, environmental, geo technical and other pre construction surveys. Some sites had been the subject of significant infrastructure works and others had completed accommodation.

The construction team at Flint Bishop conducted due diligence on more than 200 building and infrastructure contracts and professional appointments, in order to understand the risks that acquiring such sites, with on-going or completed works, represented for our client. The team then managed the

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process of procuring the numerous warranties required to minimise or offset those risks.

Our title investigations uncovered a number of deficiencies, which led to a revaluation of the portfolio and enabled our client to take a firm view as to value during commercial negotiations.

Our title and property investigations enabled our client to insist upon a series of complex retention arrangements. This involved a withholding of monies from the purchase price and release upon satisfaction of certain conditions, designed to cover risks associated with known title defects, outstanding works and other on-going obligations that remained to be performed by Wilson Bowden.

THE OUTCOME

Clowes Developments (UK) Ltd were delighted with the team's performance and our due diligence considerably re-valued the portfolio, saving them in excess of £10m.

This was made possible due to the size and experience within our commercial property and construction teams and the team's ability not only to react quickly to a number of commercial changes, but also to demonstrate excellent project management skills by not deviating from the project plan throughout the transaction.

"From the outset Flint Bishop's approach left me with complete confidence in their ability to deliver all elements of this complex deal on time and on budget. We were particularly impressed with their ability react quickly to a range of unplanned changes without deviating from their comprehensive project plan."

Ian Dickinson, Finance Director of Clowes Developments (UK) Limited

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