

REPORT ON TITLE

TO: Proplend Security Limited

FROM: Paris Smith LLP

FULL NAME OF BORROWER: Desilu Hampstead Ltd

COMPANY NUMBER (if appropriate): 09892771

DESCRIPTION OF PROPERTY: 18-20 Frognal London NW3 6AG

IS BORROWER THE SAME AS OWNER? Yes

FULL NAME OF OWNER IF DIFFERENT (Where Property is being transferred state intended owner): Not applicable

1. **TITLE**

a. We certify that the Property is:

Tenure:	Freehold
Title number (if registered) or if not confirm whether it is unregistered and/or subject to first registration:	NGL667264
Class of title (if registered):	Absolute

- b. We certify that the Title to the Property is good and marketable and can be accepted by you as security.
- c. We annex hereto a copy of the Title Plan showing the Property edged red.
- d. The Property is registered in the name of the Borrower.
- e. We confirm that the only Restrictive Covenants which affect the Property are set out in the attached Schedule.
- f. Adverse interests affecting the Property are referred to in the Schedule.
- g. No person other than the Borrower has an equitable or overriding interest in the Property.
- h. The Borrower will be in sole possession of the Property.
- i. Proplend Security Limited will obtain a First Legal Charge over the Property.

2. **SEARCHES:**

We confirm we hold:-

- a. Clear Land Registry Search giving Proplend Security Limited priority beyond the date of completion.
- b. Local Land Charges and Local Authority Search no older than four months prior to the date of completion of the charge revealing no Entries which might adversely affect Proplend Security Limited's security.
- c. Bankruptcy Search giving Proplend Security Limited priority beyond the date of completion against the Guarantor.

All other appropriate Searches have been carried out and, save as referred to below, reveal no Entries adverse to Proplend Security Limited's security.

3. **VALUATION:**

We have read the Valuation Survey Report dated 30 May 2018 prepared by Strutt & Parker and confirm that:-

- i) there are no discrepancies between the report, the title documentation and the results of our searches
- ii) we are satisfied that Proplend Security Limited will obtain a legal mortgage over the whole of the land shown edged red on the Title Plan

4. **BUILDINGS INSURANCE:**

The following Insurance Policy is in force:

Insurer: Allianz

Name of Insured: Desilu Hampstead Ltd t/a Langorf Hotel

Sum Insured: £5,307,806

Sum Insured recommended by Valuer: £4,350,000

Renewal Date: 03.09.2019

Policy No: 32/SB/13561337/09

Current Premium: £6,328.89 (inc. IPT and Underwriting Fees)

5. **PURCHASE CONTRACT:**

- | | |
|---------------------------|----------------|
| i. Purchase Price: | Not Applicable |
| a. Property: | Not Applicable |
| b. Fixtures and Fittings: | Not Applicable |

6. **SECURITY DOCUMENTATION:**

The following security documentation has been properly executed and witnessed and is held by ourselves. (Please delete if not applicable).

- a. Legal Charge The Legal Charge will be dated upon completion.
- b. Debenture The Debenture will be dated upon completion.
- c. Guarantees The Guarantees will be dated upon completion.

7. **COMPLETION ARRANGEMENTS**

We now request you to pay to us the Advance Amount and undertake that if you pay to us the said sum and we shall use the same only to effect the purchase of the Property by the Borrower-

We confirm we hold an irrevocable undertaking from a firm of solicitors that following completion they will send a completed AP1 in respect of the acquisition of the Property and registration of Proplend's Legal Charge and Debenture, any necessary supporting documentation, and any title documents that are received from the Seller's solicitors.

Our banking details are:

Account Name: Paris Smith LLP Client Account
Account Number: 37559583
Bank: National Westminster Bank plc
Branch: 12 High Street Southampton
Sorting Code No: 56-00-68
Completion date: TBC

Please Quote Reference: NJV/113022/33

SCHEDULE

RESTRICTIVE COVENANTS

(please confirm whether or not the restrictive Covenants are onerous)

1. The Property is subject to the following rights which were reserved by a Conveyance dated 10 February 1896 and made between (1) Sir Spencer Maryon Wilson ("Vendor") and (2) Charles Smithee Sharp ("Purchaser"). Below is a summary of the main covenants contained in the Conveyance:-
 - a. All buildings erected on the land shall have their frontage facing Frognal.
 - b. No dwellinghouse shall be erected on the said premises of less value than £1,200
 - c. No building other than a private residence and stabling greenhouses and conservatories shall at any time be erected on the land, and no stucco shall be employed on the exterior of the building except with the permission of the Vendor or his surveyors.
 - d. No building shall be used otherwise than for a private resident and that no trade business or manufacture shall be carried on at the Property, except the business or profession of a Surgeon or Physician.
 - e. No bricks shall be burn on the land, and nothing shall be done on the Property which may cause a nuisance or cause annoyance or damage to the Vendor etc.

Obviously the current use of the Property would be a breach of the above covenants. However, the Borrower's solicitor has agreed to put in place a restrictive covenant indemnity policy for the value of the Property on completion.

ADVERSE INTERESTS

(please confirm whether or not the Adverse Interests are onerous)

1. The entire property will upon completion be subject to a Management Agreement made between (1) Smart Hotels Limited ("Smart") and (2) the Borrower. The Management Agreement is in a fairly standard form, but we would draw your attention to the following points:-
 - a. The Agreement is stated to start on 1 December 2018, we have asked is this is correct and the Borrower's solicitors have now confirmed this will now be amended to the date of completion of the drawdown.
 - b. The Agreement currently covers only 20 Frognal and need to include 18 Frognal as well. This has now been amended to include both 18 and 20.
 - c. In essence, the Borrower will receive services from Smart in the management of the occupiers of the Property. The services are set out in Schedule 1 of the Agreement. They will provide those services with reasonable skill and care in accordance with best practice. They will provide personnel who possess a degree of skill and experience appropriate to the tasks involved and will also ensure the key personnel remain engaged although we cannot see any definition or list of who those personnel will be. It has now been agreed that the key personnel will continue to be employed by Desilu and therefore these provisions are no longer relevant.

- d. There are provisions for the parties to use specific information, equipment, etc in providing the services.
- e. Under Clause 6, Smart will retain the occupant monies which are the rents or other monies due from each of the occupants of the Property less the fee payable to the Borrower under Schedule 2 (see below). It would seem that VAT is payable in addition to the fee and is to be paid 30 days after receipt by Smart of the invoice. We mention this because that means that payments are made in arrears and that has a bearing on the "rent free" period as to which again, see below.
- f. There can be changes to the arrangements and we think that it should be made quite clear that that will not in any way affect the amount of the service charge payable to the Borrower. It is now agreed that any such changes need to be with your consent provided notice has been given to Smart Hotels Limited that you have charged the Property.
- g. Under Clause 10, neither party can give, bargain, sell, assign, let or otherwise dispose of their rights under the Agreement. It needs to be specifically provided that the Borrower can charge the Agreement which will be the case under your Debenture. This has now been amended.
- h. Under Clause 16, Smart's maximum liability for any claims in any year is £5,000,000 and Desilu's aggregate liability is the amount of the service charge in the year.
- i. Under Clause 19, the Agreement can be terminated but only where there is a breach or a party becomes insolvent or ceases to trade in the UK. The Borrower can terminate if there is a change of control of Smart.
- j. There is no provision to terminate on notice and therefore this Agreement will continue indefinitely unless any of the above circumstances occurs. We have raised this point with the Borrower's solicitors, but there is no provision for amendment on notice, only where there is a breach.
- k. Under Schedule 2, the Borrower is to receive the service charge of £4000,000 per annum paid in arrears in monthly instalments. It is also to be paid "from the Occupant Monies". That should not be the case. If there is any default by the occupiers in paying the Occupant Monies, then that should be a risk for Smart and not for the Borrower. If suddenly all the occupiers refused to pay, then Smart still needs to make the monthly payment and this needs to be amended. This has now been amended so that the service charge is payable come what may whether or not occupant's monies are received.
- l. Under the second bullet point, I think that the remainder of the Occupant Monies should be restricted to the payments that are received in respect of the services as set out in Schedule 1. There may be other payments due which should go to the Borrower direct (insurance for the Property, etc).
- m. There is a rent free period of 3 months and therefore they are saying the first payment will be due on 1 April 2019 so you will see that in effect, there is a 4 month rent free period (because the payments are payable monthly in arrears). We have advised the Borrower's solicitor of the Borrower's obligation to service the monthly interest payment.

- n. You will see that there is a detailed exit plan if the Agreement is terminated as set out in Schedule 3 most of which is in standard form. However, there is a potential TUPE position here which would mean that Desilu was lumbered with the employees from Smart and would have to take those on albeit that there is an indemnity from Smart. That indemnity, of course, is worth only whatever Smart is worth at the time.
- o. Originally there was to be a Lease to Smart. The draft we have seen is not compatible with the Management Agreement. We have raised with this the Borrower's solicitors who say that no Lease will be in place and that this is a Management Agreement.

2. The Local Authority Search reveals eight planning permissions relating to the Property.

- a. Planning Permission (reference: CA3326/AD847(R)) dated 20 September 1978 which granted permission for erection of an internally illuminated sign
- b. Planning Permission (reference: CTP/F6/6/A/26957) dated 10 July 1979 which granted permission for the erection of a ground floor extension to the rear of the Property to provide additional restaurant space.
- c. Planning Permission (reference: 8803934) dated 24 November 1988 which granted permission for the erection of a five story rear extension and other minor works to include the infilling of gaps between the two buildings (18 and 20 Frognal).
- d. Planning Permission (reference: 8870631) dated 24 November 1988 which granted permission for the demolition (in a conservation area) of parts of the roofs the rear extension and parts of the rear elevation.
Please note that the Property is within the Redington/Frognal Conversation Area. The area was designated as a Conservation Area on 18 June 1985.
- e. Planning Permissions (reference: 9293020 and 9293007) both dated 13 May 1992 which granted permission for various works (felling, pruning, raising etc.) various trees at the Property.
- f. Planning Permission (reference: 2007/5871/P) dated 28 May 2008 which granted permission for the erection of a single storey garden pavilion connected to the ground floor level bay window, for use ancillary to the use of the Property as a Hotle (Class C1)
- g. Planning Permission (reference 2014/5454/P) dated 20 June 2017 August 2015 which grants permission, subject to the terms of a Section 106 Agreement (which are set out in paragraph 3, below), for a change of use from Hotel (Class C1) to residential (Class C3) to provide 13 flats (4x 1 bed, 7x 2 bed, and 2x 3bed) the erection of a single storey first floor rear extension, rear dormer roof extension. Side dormer roof extension and additions and alterations to the doors and windows on the side and rear elevations of the Property.

The planning permission (reference: 2014/5454/P) expires in June 2020, however, the management agreement is for a term of five years. You have requested an undertaking

from the Borrower's to apply to renew the planning permission within the last 6 months of the current term if it has not been activated by then. We have raised with this the Borrower's solicitors who say that the undertaking will be given on completion.

The search reveals that the Property is within an area where there is a Community Infrastructure Levy ("CIL") Schedule. We have raised this point with the Borrower's solicitors who have advised that CIL will not be applicable if the development/works have not yet commenced. As and when the planning permission (reference: 2014/5454/P is activated, then a CIL demand notice will be issued. At this point, the liability notice can be challenged. I understand the advice obtained by the Borrower is that if a building has been used for 6 months in the previous 36 months, and there are no extensions proposed, the floor space is deductible from the CIL calculation and no charge should be applied to the property. An exemption application will be submitted to the Local Authority with the relevant evidence to support that the building has been in lawful hotel use for the period of 6 months within the last 36 months, so that it will be CIL exempt.

In terms of access the search reveals that Frognaal is a public highway maintainable at the public expense; this is confirmed by the results of a separate Highways Search.

Aside from the above the search indicates that there are proposals for a railway, tramway, light railway or monorail within the Local Authorities Boundaries. The Borrower's solicitor has provided a separate TfL search which has advised that while there are overground services in the vicinity of the Property they are not sufficiently close as to be likely to affect the Property. Further TfL have advised that there are no approved proposals for any new TfL services in the vicinity which would affect the property, and they are not aware of any rights being claimed in relation to the Property.

3. The Section 106 Agreement is dated 20 June 2017 and imposes a number of obligations on the Borrower. As you are not funding the development work we have not summarised all of the points of the Agreement. However, we would draw your attention to the following contributions which are payable under the terms of the Agreement:-
 - a. Affordable Housing Contribution: £394,850
 - b. Highways Contribution: £18,973
 - c. Pedestrian Cycling and Environmental Contribution: £7,000
4. The Drainage and Water Search reveals that the Property is connected to public sewers and mains water, and that surface water drains in to public sewers.

The search also reveals that there are public sewers within 30.48 metres (100 feet) of buildings at the Property, however, there are no water mains, discharge pipes etc. within the boundaries of the Property.

5. It is now standard procedure to undertake environmental desktop searches in transactions of this nature. However please note the limited nature of the search. The search is undertaken by independent search consultants at a limited cost and is compiled by the search consultants on the basis of inspection of documentary records only accessed by means of a "desk top" search. It does not, of course, arise from a physical inspection of the site. Clearly it will not reveal information which is not recorded in public documentation. The search should therefore be regarded as a general guide only. If you have concerns as to possible contamination of the site then you should discuss further with us the need for a

more detailed survey (possibly including a site survey). You will understand that we are not qualified to advise on whether or not the search results are acceptable (or the level of risk involved) but we would be happy to discuss any particular queries with you and to consider with you whether further expert advice should be obtained on any matters arising from the search result itself and/or with regard to the site or your proposals generally.

Subject to the comments above we would point out that the report has been certified as an "Acceptable Risk" meaning that in the professional opinion of Landmark Information the level of risk associated with the information disclosed in the report:

(a) is unlikely to have an adverse effect on the value of the Property, and

(b) is not such that the Property would be designated "Contaminated Land" within the meaning of Part IIA of the Environmental Protection Act 1990.

While Landmark Information has said that the Property represents Acceptable Banking Security from a contamination perspective, they have said there is a risk of surface water flooding.

In addition this search has also revealed that the Property is within 1km of HS2 route, but this also confirms that the Property is outside the safeguarding limited.

6. The Chancel Search indicates that the Property does not have a liability for Chancel Repairs.
7. The Asbestos Management Survey from August 2018 has indicated that there is no evidence that any materials in the Property contain asbestos.
8. The Fire Risk Assessment, dated 30 October 2015, gives the Property a medium to high risk rating, in part because the Property provides sleeping accommodation across 31 rooms. The Borrower's solicitor has advised that he understands that the recommendation contained in the Fire Risk Assessments have been carried out, and that no new assessments has been carried out.
9. The EPC shows that the Property has an energy performance asset rating of D.
10. There are inter-company loans between the Desilu Group and the Borrower. We have requested details of these as they need to be postponed to your security. We await further information from the Borrower's solicitors.

Signed by:

Signature:



Name: Nick Vaughan

Position: Senior LLP Partner

authorised to sign for and on behalf of Paris Smith LLP

Date: 19 December 2018

H.M. LAND REGISTRY		TITLE NUMBER	
		NGL667264	
ORDNANCE SURVEY PLAN REFERENCE ©	COUNTY	SHEET	NATIONAL GRID
	GREATER LONDON		TQ 2685
Scale: 1/1250			SECTION AA

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BOROUGH of CAMDEN

Old Reference LN VI 9 B (Pt of)
LN II 99 M (Pt of)

