

Mr James Dobson  
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Dear Mr Dobson

**THE CEDARS, RIVERSIDE DENE, NEWCASTLE UPON TYNE**

Further to your email dated 26 November 2015 regarding the procurement of the management contract for the Cedars, we have taken advice from our Legal and Procurement departments and would respond in detail below.

As Newcastle City Council will remain the contracting authority we are legally responsible for the procurement of the contract. We are required to follow both our internal procurement rules and, given the estimated contract value, the Public Contract Regulations 2015. Where this is the case the Council has an obligation to conduct a fair, transparent competitive process to appoint any service provider.

As we have already indicated we do want to include the residents in the process where permissible to do so, and we have asked the Cedars Steering Group to consult residents for suggestions of what should be covered by the specification and are also able to take into account any other factors that residents wish to raise with regard to the contract opportunity. Having done so however the Council must then decide on, and go to the market, with a clear requirement and basis of evaluation that once published must be adhered to avoid both costly and time consuming legal challenges. We will in due course carry out more formal statutory consultation with all leaseholders and the newly formed Cedars Residents Association in accordance with s.20 Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) Regulations 2003.

Given the estimated contract value and the need to advertise the proposed contract by EU public notice, the statutory consultation process must comply with Schedule 2 of the Service Charge (Consultation Requirements) Regulations. This requires us to serve consultation

notices on all leaseholders and any recognised tenants' association at the following two stages of the process of awarding the contract:

- The pre-tender stage – notice of intention to enter into a management agreement. The notice must give a general description of the services to be provided under the management agreement and leaseholders have 30 days to submit their written observations and comments. However there is no right of nomination of alternative contractors. The landlord must have regard to any observations received.
- The tender stage – notice of landlord's proposals to enter into a management agreement. Following receipt of tenders, the landlord is required to present a proposal to leaseholders. This must contain a statement of the name and address of the parties to the proposed contract and of any connection, a statement of the leaseholders estimated contribution (where reasonably practicable), the intended duration of the agreement, a summary of observations received from leaseholder during the pre-tender stage consultation and the landlord's responses to these. Leaseholders have 30 days to submit written observations and comments on the proposals and the landlord must have regard to those observations. The landlord must also at this stage provide a written response to the individual respondent's observations.

As stated, there is no right of nomination of alternative contractors under the statutory consultation process where the proposed agreement requires public advertisement within the EU. However the Council can, and will, invite leaseholders and the RA to give names of any contractors that they would like to see bid for the contract. It would then draw the relevant contractor's attention to the fact that the contract advertisement has been published and is available and invite them to bid. The Council is unable to favour any particular contractor either at this point or at any time during the process however as set out above the Council is legally responsible for carrying out the procurement and will do so in line with its internal procedures. As such evaluation of the tenders will be undertaken by an appropriately qualified panel of council staff. It is unfortunately not open to the Council to allow residents or any external party to choose a preferred supplier as the successful tenderer who scores most highly against the published criteria must be awarded the contract.

I can also confirm that the Council have had no discussions with Kingston Property Services regarding the management of the Cedars and the Council have no links with the company.

Whilst not able choose a contractor, subject to suitable formal arrangements being put in place with regard to confidentiality and liability, there may be options for residents to feed in to the evaluation process issues from a resident's perspective. However the actual evaluation will be the responsibility of the officer evaluation panel.

We apologise if you feel that the marketing materials contained any misleading statements, however this does not alter our position in that we are bound to follow the procurements rules and regulations.

As requested we are now able to confirm that you do not qualify to 'Right to Manage' under the Commonhold and Leasehold Reform Act 2002. At the last residents meeting it was asked whether we could allow the residents to manage the building in the same way as set out in the legislation even if they do not qualify. As the Council would in law remain responsible for procurement of the arrangements we would be unable to do this as it would be in breach of our internal regulations and also in conflict with our obligations under the EU procurement regulations.

We look forward to see you at the meeting on 22<sup>nd</sup> December 2015 were we will discuss the procurement documents including the specification, timescales, further consultation and resident involvement.

Yours sincerely

A handwritten signature in black ink, appearing to be 'PB' with a flourish, positioned over the typed name below.

**Paula Bashforth BSc (Hons) MRICS**  
**Property Portfolio and Markets Service Manager**

