SHERIFF APPEAL COURT

[2019] SAC (Civ) 38
EDI-SG2370-17

Sheriff Principal I R Abercrombie QC
Sheriff Principal M Lewis
Appeal Sheriff P J Braid

OPINION OF THE COURT

delivered by APPEAL SHERIFF P J BRAID

in the cause

SCOTTISH WOODLANDS LIMITED, a company incorporated under the Companies Act (Registered Number SC101787) and having their registered office at Research Park, Riccarton, Edinburgh, EH14 4AP

Claimant and Appellant

against

OLAJIDE MAJEKODUNMI AND ADIJAT MAJEKODUNMI

Respondents and Cross-Appellants

Claimant and Appellant: D Thomson QC; Addleshaw Goddard
Respondents and Cross-Appellants: party

12 November 2019

Introduction

[1] The appeal and cross-appeal in this simple procedure claim relate to a modern housing development at Wester Cowden, Dalkeith, of which the respondents' property forms part. While no evidential hearing has taken place, and some facts remain in dispute, the following appears to be uncontroversial. The development comprises new houses, built and released to the public in batches, such that the development is not yet (or at least, was

not as at the date to which the claim relates) complete. As is usual, the development contains amenity ground which, somehow, must be maintained and paid for by the proprietors within the development. The scheme for maintaining it follows the "land-owning" model. For a description of that model we can do no better than repeat that given by this court in *Greenbelt Group Limited* v *John Walsh & Others* [2019] SAC (CIV) 9 at para. 1:

> "…the model whereby the plot owners in a development do not own the amenity areas of their development, yet share the costs of maintenance of those amenity areas which are the responsibility of a third party owner. The land-owning model falls to be contrasted with the common-ownership model, which is where the plot owners own the amenity areas in common and share the costs of maintenance."

[2] At the heart of the dispute is the clause in the respondents' title which seeks to define the Annual Management Charge (the amount which they must pay in respect of their share of the maintenance of the amenity ground), *viz* clause 7.2 of the Deed of Servitudes and Conditions referred to more fully at para [8] below. It is in the following terms:

> "In this Clause 7.2: "Annual Management Charge" means the pro rata share applicable to each Plot of the total annual costs incurred by the Open Ground Proprietors in effecting the Management Operations, together with reasonable estate management remuneration, insurance premiums and charges (plus all Value Added Tax exigible thereon) for the relevant year, which pro rata share shall in the case of each Plot be calculated by reference to the total number of Plots created or permitted to be created within the Entire Site with each Plot bearing annually a proportion of the said costs, remuneration, premiums and charges (and so that and by way of illustrative example only, if the said total number of Plots amounts to one hundred (100), each Plot shall bear a one-hundredth share of the said costs, remuneration, premiums and charges annually);"

[3] The appellant seeks payment from the respondents of the sum of £405.60, which they aver is the balance remaining due in relation to certain invoices issued to the respondents for what they describe in their simple procedure application as the "annual shared maintenance charge" which "included Maintenance, Insurance, Cumulative Maintenance Fund and Administration Charges". The appellant also avers that it had carried out landscape

maintenance services "in respect of the common spaces at the development detailed in this Claim as defined in the Agreement between Persimmon Homes Limited and [the appellant] dated 27th September 2012 and 6th February 2013…The property is owned by the Respondents."

[4] Fundamentally, although the basis of the appellant's claim appears to be that the respondents are liable to pay the Annual Management Charge by virtue of a real burden in their title, nowhere is that stated. Further, the reference to the "development detailed in this Claim" is more than a little opaque. Likewise, the reference to the common spaces "as defined" in the agreement referred to is somewhat disingenuous, given the drafting complexities in that agreement, as will be seen below. Reference to the invoices does little to shed light on how the appellant has calculated the sums claimed, or its entitlement to all the sums therein, most of which appear to bear no relation to the carrying out of landscape maintenance services, nor do the invoices appear to detail either the total overall cost of each of the heads of the claim, or the proportion of that overall cost which the respondents are being requested to pay. It is virtually impossible for the respondents, let alone the court, to tell from the information provided whether or not they have been charged the correct amount, and how the figure invoiced has been arrived at. We would observe that the claim as averred is so convoluted and lacking in specification as to be virtually meaningless. The appellant is most fortunate that the summary sheriff did not dismiss the Claim, which he would have been perfectly entitled to do, or at the very least issue an Unless Order requiring amendment of the averments. We also observe that this case shows the dangers of attempting to reach a final determination based on submissions where critical facts were in dispute. We refrain from commenting on the drafting of the deeds themselves save for

observing that they illustrate the further danger inherent in preparing documents of wholly unnecessary complexity.

[5] It would have been helpful to the parties and to us had the summary sheriff expressly set out in at least one of his reports the relevant facts upon which he based his decision. Had he done so, many of the subsidiary issues in dispute may have been capable of resolution prior to the appeal hearing. It is also rather unfortunate that he recorded that "the facts were agreed" when patently that is not correct. He did not hear evidence; there was no joint minute of admissions; and as became clear during the appeal hearing, there was much in dispute.

[6] Be that as it may, the summary sheriff felt able to reach a final decision without hearing evidence, on the basis that he considered that the facts were sufficiently agreed. He rejected an argument by the respondents that it was not the appellant who had carried out the landscaping services. He also rejected the respondents' argument that they only had to pay a share of the maintenance of "their" amenity ground, holding that they had to contribute not only to the amenity ground in the part of the development of which their house forms part, but also that in another part of the development (the larger development being made up of two different tranches of land, as can be seen from the definition of the *Entire Site* mentioned in paragraph [9] below). Those aspects of his decision were not challenged in the appeal before us.

[7] The principal argument before the summary sheriff appears to have been, what was the *pro rata* share which the respondents were required to pay? After hearing argument as to the meaning of the phrase "the total number of plots created or to be created", he

concluded that the phrase fell to be construed conjunctively. The essence of his reasoning is at paragraph 4 of his report of 23 August 2018, where he stated:

> "The phrase can only relate to a total, not a changing figure nor a figure the developer is aiming for. Once an area of land is purchased for development there will be a total number of plots permitted to be created. Once plots are developed, there are plots 'created' and the remaining are 'permitted to be created'. This is a fixed total and the only way to read the phrase is not to give effect to 'or' as a choice, but in the certainty of that fixed total….I was told in submissions that the total number permitted to be created was 850."

[8] Thus, on the summary sheriff's approach, the fraction to be paid by respondents was fixed for all time by reference to the total number of plots permitted, at the outset, to be created, rather than by reference to the actual number of plots completed and occupied at any given time. Although one of the respondents' complaints had been that their share appeared to remain constant, when they would expect it to be diminishing as more plots were being built, it does not appear that they ever argued for a fixed share, be that with a denominator of 850 or otherwise. Indeed, such a position is contrary to their assertion that their share should decrease as more plots were completed. Further, although the summary sheriff states that he was told in submissions that the total number of plots permitted to be created was 850, it appears that that figure may be one which is never reached on the ground, as it were. While it might be unfair to say that the summary sheriff plucked it out of the air, as was suggested in submissions, it is not unfair to observe that it was not an agreed figure, nor one arrived at after hearing evidence. The summary sheriff having selected that as the appropriate fraction, he then granted decree in favour of the appellant for the restricted sum of £308.26, having performed the necessary arithmetical operation on the sum sued for.

[9] The appellant has appealed against that decision on the ground that, on a proper construction of the title deeds, the summary sheriff erred in arriving at a *pro rata* share of 1/850, as opposed to the 1/647 share apparently contended for by the appellant. The respondents have cross-appealed, on a variety of grounds, but for present purposes the main one is that there is no valid burden and that they do not require to pay anything. The summary sheriff does not address this in his second report, and it is not clear to us whether this point was taken before him. However the appellant did not submit that the point was not properly before us.

The issues

[10] The summary sheriff's various reports (which we observe in passing appear to stray beyond a mere report of proceedings before him, which is all that is required, into a more general exposition of his views on the issues raised in the appeal and cross-appeal), the notes of argument and the other documents lodged in the appeal at first sight raise a bewildering range of issues of labyrinthine complexity. A number of factual matters also remain unclear to us, not least the basic one as to whether or not the appellant has proved its own title. Nonetheless, as the appeal developed at the appeal hearing (at which the appellant was ably represented by Mr Thomson QC, and the respondents represented themselves, equally ably) it transpired that there are but two relatively narrow issues for this court to resolve:

1. Is the burden contended for by the appellant void for uncertainty?
2. If not, did the summary sheriff err in his construction of it?

Broadly speaking the second of those issues is addressed in the questions posed by the summary sheriff at paragraph 8 of his report dated 23 August 2018, the essence of which is whether the summary sheriff's construction of the clause in question was correct or not; and the first issue is addressed in the question posed at paragraph 5.b of the report dated 24 October 2018. The remaining questions are either otiose or relate to points which did not feature in the hearing before us.

Is the burdens clause void for uncertainty?

[11] Although the construction point was the one which featured before the summary sheriff, and was appealed first, logically it is necessary to begin with the cross-appeal since, if it is successful, the correct construction of the clause in question becomes irrelevant. We will therefore begin by considering the second question: is the burden purportedly created by clause 7.2 void for uncertainty? The starting point in that exercise is to have regard to the respondents' title.

The respondents' title

[12] The respondents' title certificate was lodged as tab 1 of the appendix. The burden section therein refers to five deeds but it was common ground that only the second is relevant for present purposes, namely, Deed of Servitudes and Conditions between Pentland Limited ("Pentland") and Grange Estates (Newbattle) Limited ("Grange") recorded GRS (Midlothian), 23 May 2005. Skipping forward to clauses 7.1 and 7.2, the operative parts of those clauses are as follows (we have italicised all material defined terms for the benefit of the reader):

"7.1… The following real burden is imposed on the *Burdened Property* in favour of the *Benefited Property*. The *Burdened Proprietors* shall carry out the *Management Operations* provided that: (i) the foregoing obligations shall be deemed discharged at such time as the *Benefited Property* shall have ceased substantially to be used as a residential housing development; and (ii) notwithstanding the foregoing, the *Burdened Proprietor* (*sic*) shall be entitled, at all times, to use the *Open Ground* for such purposes as they consider are necessary or appropriate as being ancillary to the maintenance and/or management of the *Open Ground* but acting at all times in accordance with generally prevailing principles of sound silvicultural and/or sound residential land management practice (as the case may be);

7.2 :…..
The following real burdens are imposed on the *Burdened Property* in favour of the *Open Ground*:
7.2.1 The Proprietors are hereby taken bound and obliged to pay the *Annual Management Charge* applicable from time to time to each *Plot* and which sum shall be payable in all time coming annually in advance by the Proprietor of each *Plot* to the *Open Ground Proprietors*; declaring for the avoidance of doubt (i) that no *Annual Management Charge* will be payable by Pentland, Grange or any developer, and will only become payable in respect of any *Plot* when development thereof has been completed and ownership thereof as a separate entity created;…"

[13] As we have highlighted, those provisions contain a number of defined terms, some of which are peculiar to each clause, others being common to both clauses. The material definitions which apply only to clause 7.1 are:

- "*Benefited Property*" – The *Entire Site* under exception of the *Open Ground*;
- "*Burdened Property*" – the *Open Ground*;
- *"Burdened Proprietors"* – the *Landscape Company.*

In clause 7.2, the definitions are in effect reversed so that:

- "*Burdened Property*" – The *Entire Site* under exception "as aforesaid" i.e. under exception of the *Open Ground*;
- "*Benefited Property*" – The *Open Ground*;
- *"Proprietors"* – the proprietor of each *Plot;*
- *"Annual Management Charge"* – see para. [2] above.

The definitions common to both clauses are as follows:

- *"Landscape Company"* (clause 1.1) – Scottish Woodlands Limited;
- "*Entire Site*" (clause 1.1) – the *Pentland Land* and the *Grange Land* together;
- "*Pentland Land*" (page 22) – area of land shown shaded purple on the *Plan*;
- "*Grange Land*" (page 22) – area of land shown coloured yellow on the *Plan*;
- "*Plan*" (page 22) – Supplementary Plan 2 to the Title Plan, which is a copy of the Plan annexed to the deed of Servitudes and Conditions";

- "*Open Ground*" – the *Development Common Property*, or part or parts thereof, disponed or transferred to the Landscape Company;
- "*Development Common Property*" clause 1.1 (page 21) – *Public Open Space*, *Landscaped Areas*, cyclepaths, accessways, parking areas, roads and footpaths including the Distributor Road and the Spine Road… all grass, planted, slabbed, gravelled and tarmacadamed areas not included within a *Plot*";
- "*Public Open Space*" clause 1.1 (page 22) – Any area (together with any apparatus or equipment installed thereon designated in any *Planning Consent* for sports, play, recreational or other leisure purposes;
- "*Landscaped Areas*" clause 1.1 (page 21 of 41) – Any areas within the *Entire Site* designated in any *Planning Consent* to be permanently planted with trees, shrubs, grass or other planting, or otherwise as the *Planning Consent* may prescribe but always excepting any Plot;
- *Planning Consent*" clause 1.1 (page 22) – Any outline or detailed planning consent or reserved matters consent governing development of any part of the Entire Site;
- *"Plot"* clause 1.1 – each of the plots or areas of ground as detailed or defined in any *Planning Consent* on which a dwellinghouse or other building is constructed within the *Entire Site* or which forms the exclusive curtilage of such dwellinghouse or other building.

[14] As far as the validity of the burden sought to be created by clause 7.2 is concerned, the controversy between the parties narrowed down to whether the benefited property referred to in that clause is sufficiently identified. Before proceeding to discuss that, we acknowledge that, as counsel for the appellant submitted, the burdens in clauses 7.1 and 7.2 must stand or fall together as they are mirror images of each other, and refer to the same defined terms. In other words, if the obligation to pay the Annual Management Charge for the cost of the management operations is void, equally the obligation in clause 7.1 to carry out the management operations is likewise void. Nonetheless, while that may be an unsatisfactory outcome, for the respondents and the other proprietors as much as for the appellant, the question remains whether or not the clause with which we are concerned, 7.2, is or is not void for uncertainty.

The respondents' argument

[15] The respondents argue that clause 7.2 is void for uncertainty. Their argument is attractive in its simplicity, and is that the benefited property cannot be identified from the deed itself, or any plan attached thereto. That is because the definition of Open Ground, as meaning the Development Common Property, refers in turn to Public Open Space and Landscaped Areas, both of which require resort to be had to Planning Consents in order to identify the land comprised therein. Accordingly, they say, the "four corners rule" is breached, in as much as one must look outwith the four corners of the deed to identify the benefited property, which is not permissible. On that basis, the benefited property not being adequately identified, the burden must be void for uncertainty.

The appellant's argument

[16] In response, the appellant argues that because the maximum extent of the benefited property is known to be the Entire Site, which is a clearly defined area, and the Open Ground is known to fall within that area, the Open Ground is therefore adequately identified, since it cannot fall outwith the Entire Site. Thereafter, on the authority of *Anderson* v *Dickie* 1915 SC (HL) 79 at 86, the precise area of the Open Ground may be identified by reference to extrinsic evidence. Given that the common law did not require the nomination and identification of the benefited property, section 4(2)(c)(ii) of the Title Conditions (Scotland) Act 2003 ("the 2003 Act") which requires the same should be interpreted in a liberal way. The purpose of identifying the benefited property in this case is to identify the extent of the land which proprietors are to pay to maintain. To that end regard should be had to the fact that the costs are to be shared amongst a large number of

individual proprietors and a proper description of the benefited property is sufficient in those circumstances. Further, the appellant refers to section 5(1)(b) of the 2003 Act which provides that:

> "5(1) It shall not be an objection to the validity of a real burden (whenever created) that -
> (a) …
> (b) a proportion or share payable in respect of an obligation to contribute towards some cost is not so specified provided that the way in which that proportion or share can be arrived at is so specified".

[17] The requirement to know the scope of the benefited land is to determine the amount that individual proprietors will have to pay. Therefore, it follows that precise identification of the benefited property can be said to form part of the way in which that proportion or share can be arrived at. Accordingly, consideration should be had to other documents outwith the respondents' title, such as the appellant's title.

The law

[18] Section 4 of the 2003 Act provides for the creation of real burdens and is in the following terms:

> "4(1) A real burden is created by duly registering the constitutive deed…
> (2) The reference in subsection (1) above to the constitutive deed is to a deed which –
> (a) sets out… the terms of the prospective real burden;
> (b) is granted by or on behalf of the owner of the land which is to be the burdened property; and
> (c) except in the case mentioned in subsection (4) below, nominates and identifies –
> (i) that land;
> (ii) the land (if any) which is to be the benefited property…"

[19] Section 5 contains further provisions, as follows:

> "5(1) It shall not be an objection to the validity of a real burden (whenever created) that –

> (a) an amount payable in respect of an obligation to defray some cost is not specified in the constitutive deed; or
> (b) a proportion or share payable in respect of an obligation to contribute towards some cost is not so specified provided that the way in which that proportion or share can be arrived at is so specified…
> (2) Without prejudice to the generality of subsection (1) above, such specification may be by making reference to another document the terms of which are not reproduced in the deed; but for reference to be so made the other document must be a public document (that is to say, an enactment or a public register or some record or roll to which the public readily has access)".

Discussion

[20] The provisions of the 2003 Act were considered by the Lands Tribunal in *Marriott & Another* v *Greenbelt Group Limited* LTS/TC/2014/27. The Tribunal held that nothing in the 2003 Act could be taken as detracting from the common law "four corners" rule that it is impermissible to refer to extraneous material to identify the scope of a real burden. In that case, the issue before the Tribunal was whether it was permissible to look at a planning permission to identify the benefited land. The Tribunal held that it was not. It was submitted for the appellant that the benefited land was sufficiently identified to allow resort to be had to extraneous documents to understand the extent of the land which was identified, under reference to the following *dictum* in *Anderson* v *Dickie*:

> "For however accurate and detailed a description may be, it cannot prove the reality of the things described, and oral evidence may be needed to apply a specific written description to external facts. But that does not displace the rule of law that there must be found in the title, to begin with, the clear expression in words of a specific burden imposed on a definite piece of land."

[21] While the Lands Tribunal decision in *Marriott* is not binding upon us, we adopt the reasoning therein. The applicable law can be stated as follows. The 2003 Act did not displace the common law "four corners" rule. That rule requires the extent of the burdened property to be defined within the four corners of the deed which constitutes it. However,

whereas at common law the rule applied only to the description of the burdened property (since only the burdened property had to be identified in the constitutive deed), it now applies equally to the description of the benefited property, by virtue of section 4(2)(c)(ii) of the 2003 Act. It follows that one may not now have regard to extrinsic material in ascertaining the extent either of the burdened property or the benefited property. In particular, following *Marriott*, one may not have regard to a planning consent in order to ascertain what is either benefited or burdened property.

[22] With that principle in mind, when we turn to the description of the benefited property in the present case, we see that it is the Open Ground. That in turn is defined as the Development Common Property which in turn includes both Public Open Space and Landscaped Areas both of which terms are defined by reference to any planning consent. So, following the bouncing ball through the complexities of the definition, one arrives at a position where one can only tell what the benefited land is by referring to planning consents; not only that, but the reference to "any" planning consent, which includes "any outline or detailed planning consent or reserved matters consent", means that any number of documents might have to be consulted, some or all of which may not have been in existence when the burden was created. In our view, that plainly contravenes the four corners rule.

[23] Senior counsel for the appellant advanced a somewhat, if we may say so, ingenious argument that because the Open Ground is known to lie within the Entire Site, which is a clearly defined area, it was sufficiently defined to enable one then to have regard to extrinsic material to ascertain its precise extent. However, to know the maximum extent of a piece of ground is not to know the true extent of a specific piece of ground within it. Having regard to the wording of section 4(2)(c) of the 2003 Act, the land could possibly be said to be

nominated but it cannot be said to have been identified. Further we do not see how *Anderson* v *Dickie* assists the appellant, since the circumstances envisaged there, where extrinsic evidence may be admissible, apply only where there is a clear expression in words of (in that case) a burden on a *definite* (emphasis added) piece of land. In no way can the description of Open Ground in the present case be said to be a description of a definite piece (or pieces) of land. We further observe that in one sense this case is *a fortiori* of *Marriott*, since in that case a particular planning consent was referred to, whereas in the present case the reference is, as we have observed, to any planning consent.

[24] For completeness, the appellant's position is not advanced by reliance on section 5 of the 2003 Act. That section merely allows reference to be made to extrinsic material to enable the proportion which a proprietor must pay to be ascertained, rather than to identify the land in respect of which the amount must be paid. In other words, to adopt a common analogy, section 5 applies where the issue is how the pie is to be divided, rather than the size of the pie, or, indeed, whether it is located within the kitchen or the dining room.

[25] Consequently, and for all these reasons, the purported burden does fall foul of the four corners rule and is, in our view, void for uncertainty.

[26] It follows that the cross-appeal falls to be allowed. We will answer question 5.a in the summary sheriff's report of 24 October 2018 in the negative, recall his decision and grant decree of absolvitor in favour of the respondents.

Construction of the phrase "the total number of plots created or permitted to be created"

[27] In case we are wrong in that conclusion we should say something about parties' submissions regarding construction of the burden. The critical words are "the total number

of plots created or permitted to be created". We have set out the summary sheriff's approach to construction above.

The appellant's argument

[28] The appellant argues that on a proper construction of the deed, the summary sheriff's construction is simply wrong. It is contrary to the primary meaning of the words used, which cannot be read as requiring that the number of plots be fixed at the outset. The summary sheriff's construction involved attributing no meaning to the words "created or". The plain and ordinary meaning of the phrase was that the charge would be divided by the total number of plots created at present, the use of "or" simply being cognisant of the future contingency that further plots would be built. The charge would be divided by the total number of plots created at present and also those that are to be created in the future, once they have been created. If the phrase were held to be ambiguous, then the construction arrived at by the summary sheriff was contrary to commercial common sense. It would have the anomalous result that the appellant may never be entitled to recover the full cost of works carried out by them (if the number of plots actually created falls short of 850). In any event, the figure of 850 selected by the summary sheriff did not appear anywhere in the title deeds. The following authorities in relation to contractual construction were referred to: *Arnold* v *Britton* [2015] AC 1619 and *Rainy Sky SA* v *Kookmin Bank* [2011] 1 WLR 2900.

The respondents' argument

[29] In a response which was not altogether easy to follow, the respondents did not appear to support the summary sheriff's construction but nor did they agree that the

appellant's construction was correct. It involved giving no content to the words "or permitted to be created." The respondents' primary position, however, appeared to be that the phrase resulted in further uncertainty, in support of their argument that the burden as a whole was void for uncertainty. As they put it in their written note of arguments at para 21:

> "If we cannot work out from the terms of the deeds how many plots the share is to be divided amongst at the time the burden is purported to be created, then the burden does not meet the requirements of a real burden which must be clear and certain."

Discussion

[30] We have to say that we do not find the phrase in question particularly easy to construe. That said, difficulty in construing a provision in a contract does not of itself lead to the contract being void for uncertainty. It is the court's function to decide what the contract means. Turning to the parties' respective arguments, as the respondents point out, the appellant's construction involves no additional meaning being ascribed to the words "or permitted to be created"; on the other hand, the summary sheriff's approach involves no meaning being ascribed to the words "created or". The use of the word "total" would tend to suggest that the figure to be used is arrived at by totalling at least two other figures, otherwise it adds nothing; and the example given of a total number of 100 plots does not really take one further forward in construing the phrase since it is unclear whether, in that example, 100 plots have already been created or whether that figure includes plots permitted to be created, but not yet created. We consider that, contrary to the appellant's principal submission, the phrase is ambiguous. However, commercial common sense would appear to rule out the summary sheriff's construction as the correct one, since it would have the result that the total cost might never be recoverable by the appellant, a result which is unlikely to be intended. Even if the summary sheriff's construction were correct, there was

no basis on the material before him for selecting the figure of 850 which must be taken as the denominator in perpetuity.

[31] In the result then, we consider that the summary sheriff in this regard did err. We further consider that the court was not in a position to decide upon the respondents' proper share of the costs of the Annual Management Charge until hearing evidence as to the number of plots completed and yet to be completed, and on the whole circumstances generally. Even if we are wrong in that conclusion, on any view the summary sheriff was not in a position to decide the appropriate denominator without further enquiry.

[32] Had we refused the cross-appeal, then, we would have answered question 8.a in the summary sheriff's report of 23 August 2018 in the negative; declined to answer the other questions; and recalled the summary sheriff's interlocutor and remitted the case back to him for further procedure, before reaching a final decision, following the leading of evidence, as to the correct construction of the clause.

[33] We should add that we have considerable sympathy for the respondents. Not only were they faced with burdens deeds the drafting of which is complex and opaque to the extent of being virtually meaningless, thus making it next to impossible to ascertain the proper basis upon which they should be contributing to the maintenance of common ground, but when faced with a demand for payment they were also provided with next to no information as to how their allegedly due share had been calculated, including no information about the total costs across the whole development of the various items, the number of plots used in the calculation, how that number of plots has been calculated and what remuneration was sought.

Expenses

[34] As requested we will fix a hearing on expenses.